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Rules and Regulations

Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-AD59

Export of Components for Use in Gaseous Diffusion Enrichment Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its export licensing regulations to clarify the coverage of specially designed or prepared nuclear assemblies and components for use in gaseous diffusion enrichment plants. This action is necessary to implement the decision of the multilateral Non-Proliferation Treaty Nuclear Exporters Group (Zangger Committee) to add new definitions to its international export control "Trigger List" covering gaseous diffusion enrichment components. The NRC also is restructuring portions of its regulations in order to present the provision in a clear manner.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–0341, or Joanna M. Becker, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–1740.

SUPPLEMENTARY INFORMATION: During the past several years, the United States and other nuclear supplier governments have engaged in discussions within the framework of the International Atomic Energy Agency's (IAEA) Zangger Committee to clarify the coverage of the international nuclear export control "Trigger List" for specially designed or prepared assemblies and components for use in gaseous diffusion enrichment plants. The purpose of the clarification is to improve the administration of export controls over these items. Recently Zangger Committee members have agreed to specify certain additional components in its control list for these nuclear components.

Currently, all specially designed or prepared gaseous diffusion enrichment assemblies and components are subject in the United States to export licensing by the NRC under its export/import licensing regulations provisions of 10 CFR 110.8(b). As a result of the Zangger Committee's action, the Department of State, as the responsible U.S. Government agency for undertaking the Zangger Committee negotiations, has requested the Commission to implement the Zangger Committee's decision by publishing an interpretative rule in the **Federal Register** listing the new specified assemblies and components in 10 CFR part 110.

In support of the decision to add new definitions of gaseous diffusion enrichment components, the Zangger Committee also prepared an introductory note which further clarifies the basis for exercising export controls over the equipment specified. This note reads as follows:

Note—Gaseous Diffusion Trigger List

In the gaseous diffusion method of uranium isotope separation, the main technological assembly is a special porous gaseous diffusion barrier, heat exchanger for cooling the gas (which is heated by the process of compression), seal valves and control valves, and pipelines. Inasmuch as gaseous diffusion technology uses uranium hexafluoride (UF_6), all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF_6. A gaseous diffusion facility requires a number of these assemblies, so that quantities can provide an important indication of end use.

The auxiliary systems, equipment and components for gaseous diffusion enrichment plants are the systems of plant needed to feed UF_6 to the gaseous diffusion assembly to link the individual assemblies to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the "product" and "tails" UF_6 from the diffusion cascades. Because of the high inertial properties of diffusion cascades, any interruption in their operation, and especially their shut-down, leads to serious consequences. Therefore, a strict and constant maintenance of vacuum in all technological systems, automatic protection from accidents, and precise automated regulation of the gas flow is of importance in a gaseous diffusion plant. All this leads to a need to equip the plant with a large number of special measuring, regulating, and controlling systems.

Normally UF_6 is evaporated from cylinders placed within autoclaves and is distributed in gaseous form to the entry point by way of cascade header pipework. The "product" and "tails" UF_6 gaseous streams flowing from exit points are passed by way of cascade header pipework to either cold traps or to compression stations where the UF_6 gas is liquified prior to onward transfer into suitable containers for transportation or storage. Because a gaseous diffusion enrichment plant consists of a large number of gaseous diffusion assemblies arranged in cascades, there are many kilometers of cascade header pipework, incorporating thousands of welds with substantial amounts of repetition of layout. The equipment, components and piping systems are fabricated to very high vacuum and cleanliness standards. The items listed below either come into direct contact with the UF_6 process gas or directly control the flow within the cascade. All surfaces which come into contact with the process gas are wholly made of, or lined with, UF_6 resistant materials.

For the purposes of this annex the materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, aluminum oxide, nickel or alloys containing 60 percent or more nickel, and UF_6-resistant fully fluorinated hydrocarbon polymers.

Waiver of Notice and Comment

Because this amendment involves a foreign affairs function of the United States, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(a)(1). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the State Department has requested expeditious action on this amendment in order to meet international commitments.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule in part 110 is the type of action described as a categorical exclusion under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0036.

Regulatory Analysis

NRC already controls exports of gaseous diffusion enrichment plants and specially designed assemblies and components thereof. The amendments are necessary in order for the nuclear export controls of the United States to be consistent with United States supported international nuclear export control guidelines. The clarification will clearly reflect the nature of the enhanced multilateral export controls of the United States for this category of equipment. No other NRC regulatory actions or alternative actions by other agencies address this matter nor are any alternative courses of action feasible. While the amendments impact all potential exporters of gaseous diffusion enrichment components, they are not expected to result in any increased regulatory burden since they essentially clarify the scope of existing NRC export licensing controls. To date, NRC has neither received an application to export any gaseous enrichment components nor are any such applications expected in the foreseeable future.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule is an interpretative rule only and, as such, does not, of itself, impose additional obligations on the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and, therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Public Law 96–92, 93 Stat. 710 (22 U.S.C. 2403), section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Public Law 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234); section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); secs. 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and secs. 110.7a and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 110.8 is revised to read as follows:

§ 110.8 List of Nuclear equipment under NRC export licensing authority.

(a) Nuclear reactors.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, including gas centrifuge plants, gaseous diffusion plants, jet nozzle plants, vortex plants, laser isotope separation plants, and chemical separation plants.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements.

(d) Plants for the fabrication of nuclear reactor fuel elements.

(e) Plants for the production of heavy water, deuterium, and deuterium compounds. (See paragraph (f) of this section.)

(f) Any specially designed or prepared assemblies and components for nuclear reactors (see paragraph (a) of this section) and for the plants listed in paragraphs (b) through (e) of this section. (See appendices A, B, C, and D to part 110 for an illustrative listing of specially designed or prepared equipment for a nuclear reactor and gas centrifuge, gaseous diffusion, and reprocessing plants.)

§ 110.9 [Redesignated]

3. Section 110.9 is redesignated as § 110.9a.

4. A new § 110.9 is added to read as follows:

§ 110.9 List of Nuclear Material under NRC export licensing authority.

(a) Special Nuclear Material.

(b) Source Material.

(c) Byproduct Material.

(d) Deuterium.

(e) Nuclear grade graphite.

Appendix B [Redesignated]

5. Appendix B is redesignated as Appendix E.

Appendix A [Redesignated]

6. Appendix A is redesignated as Appendix B.

7. A new Appendix A is added to read as follows:

Appendix A—Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority

Note—A nuclear reactor basically includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain or come in direct contact with or control the primary coolant of the reactor core.

(1) Reactor pressure vessels, i.e., metal vessels, as complete units or major shop-fabricated parts, specially designed or prepared to contain the core of a nuclear reactor and capable of withstanding the operating pressure of the primary coolant.

(2) On-line (e.g., CANDU) reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed for inserting or removing fuel in an operating nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in a nuclear reactor.

(5) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control and rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

8. A new Appendix C is added to read as follows:

Appendix C—Illustrative List of Gaseous Diffusion Enrichment Plant Assemblies and Components Under NRC Export Licensing Authority

Note—In the gaseous diffusion method of uranium isotope separation, the main technological assembly is a special porous gaseous diffusion barrier, heat exchanger for cooling the gas (which is heated by the process of compression), seal valves and control valves, and pipelines. Inasmuch as gaseous diffusion technology uses uranium hexafluoride (UF_6), all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF_6. A gaseous diffusion facility requires a number of these assemblies, so that quantities can provide an important indication of end use.

The auxiliary systems, equipment and components for gaseous diffusion enrichment plants are the systems of plant needed to feed UF_6 to the gaseous diffusion assembly to link the individual assemblies to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the "product" and "tails" UF_6 from the diffusion cascades. Because of the high inertial properties of diffusion cascades, any interruption in their operation, and especially their shut-down, leads to serious consequences. Therefore, a strict and constant maintenance of vacuum in all technological systems, automatic protection for accidents, and precise automated regulation of the gas flow is of importance in a gaseous diffusion plant. All this leads to a need to equip the plant with a large number of special measuring, regulating, and controlling systems.

Normally UF_6 is evaporated from cylinders placed within autoclaves and is distributed in gaseous form to the entry point by way of cascade header pipework. The "product" and "tails" UF_6 gaseous streams flowing from exit points are passed by way of cascade header pipework to either cold traps or to compression stations where the UF_6 gas is liquified prior to onward transfer into suitable containers for transportation or storage. Because a gaseous diffusion enrichment plant consists of a large number of gaseous diffusion assemblies arranged in cascades, there are many kilometers of cascade header pipework, incorporating thousands of welds with substantial amounts of repetition of layout. The equipment, components and piping systems are fabricated to very high vacuum and cleanliness standards.

The items listed below either come into direct contact with the UF_6 process gas or directly control the flow within the cascade. All surfaces which come into contact with the process gas are wholly made of, or lined with, UF_6-resistant materials. For the purposes of this appendix the materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, aluminum oxide, nickel or alloys containing 60 percent or more nickel, and UF_6-resistant fully fluorinated hydrocarbon polymers.

1. Assemblies and components especially designed or prepared for use in gaseous diffusion enrichment.

1.1 Gaseous Diffusion Barriers

Especially designed or prepared thin, porous filters, with a pore size of 100–1000 A (angstroms), a thickness of 5 mm or less, and for tubular forms, a diameter of 25 mm or less, made of metallic, polymer or ceramic materials resistant to corrosion by UF_6, and especially prepared compounds or powders for the manufacture of such filters. Such compounds and powders include nickel or alloys containing 60 percent or more nickel, aluminum oxide, or UF_6-resistant fully fluorinated hydrocarbon polymers having a purity of 99.9 percent or more, a particle size less than 10 microns, and a high degree of particle size uniformity, which are especially prepared for the manufacture of gaseous diffusion barriers.

1.2 Diffuser Housings

Especially designed or prepared hermetically sealed cylindrical vessels greater than 30 cm in diameter and greater than 90 cm in length, or rectangular vessels of comparable dimensions, which have an inlet connection and two outlet connections all of which are greater than 5 cm in diameter, for containing the gaseous diffusion barrier, made of or lined with UF_6-resistant materials and designed for horizontal or vertical installation.

1.3 Compressors and Gas Blowers

Especially designed or prepared axial, centrifugal, or positive displacement compressors, or gas blowers with a suction volume capacity of 1 m^3/min or more of UF_6, and with a discharge pressure of up to several hundred kN/m^2 (100 PSI), designed for long-term operation in the UF_6 environment with or without an electrical motor of appropriate power, as well as separate assemblies of such compressors and gas blowers. These compressors and gas blowers have a pressure ratio between 2/1 and 6/1 and are made of, or lined with, materials resistant to UF_6.

1.4 Rotary Shaft Seals

Especially designed or prepared vacuum seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor or the gas blower rotor with the driver motor so as to ensure a reliable seal against in-leaking of air into the inner chamber of the compressor or gas blower which is filled with UF_6. Such seals are normally designed for a buffer gas in-leakage rate of less than 1000 cm^3/min.

1.5 Heat Exchangers for Cooling UF_6

Especially designed or prepared heat exchangers made of or lined with UF_6 resistant materials (except stainless steel) or with copper or any combination of those metals, and intended for a leakage pressure change rate of less than 10 N/m^2 (0.0015 PSI) per hour under a pressure difference of 100 kN/m^2 (15 PSI).

2. Auxiliary systems, equipment and components especially designed or prepared for use in gaseous diffusion enrichment.

2.1 Feed Systems/Product and Tails Withdrawal Systems

Especially designed or prepared process systems, capable of operating at pressures of 300 kN/m^2 (45 PSI) or less, including:

1. Feed autoclaves (or systems), used for passing UF_6 to the gaseous diffusion cascades;

2. Desublimers (or cold traps) used to remove UF_6 from diffusion cascades;

3. Liquefaction stations where UF_6 gas from the cascade is compressed and cooled to form liquid UF_6;

4. "Product" or "tails" stations used for transferring UF_6 into containers.

2.2 Header Piping Systems

Especially designed or prepared piping systems and header systems for handling UF_6 within the gaseous diffusion cascades. This piping network is normally of the "double" header system with each cell connected to each of the headers.

2.3 Vacuum Systems

(a) Especially designed or prepared large vacuum manifolds, vacuum headers and vacuum pumps having a suction capacity of 5 m^3/min or more.

(b) Vacuum pumps especially designed for service in UF_6-bearing atmospheres made of, or lined with, aluminum, nickel, or alloys bearing more than 60 percent nickel. These pumps may be either rotary or positive displacement, may have fluorocarbon seals, and may have special working fluids present.

2.4 Special Shut-Off and Control Valves

Especially designed or prepared manual or automated shut-off and control bellows valves made of UF_6 resistant materials with a diameter of 4 cm to 1.5 m for installation in main and auxiliary systems of gaseous diffusion enrichment plants.

2.5 UF_6 Mass Spectrometers/Ion Sources

Especially designed or prepared magnetic or quadruple mass spectrometers capable of taking "on-line" samples of feed, product or tails, from UF_6 gas streams and having all of the following characteristics:

(a) unit resolution for mass greater than 320;

(b) ion sources constructed of or lined with nichrome or monel or nickel plated;

(c) electron bombardment ionization sources;

(d) having a collector system suitable for isotopic analysis.

9. A new appendix D is added to read as follows:

Appendix D—Illustrative List of Reprocessing Plant Components Under NRC Export Licensing Authority

Note—Reprocessing irradiated nuclear fuel separates plutonium and uranium from intensely radioactive fission products and other transuranic elements. Different technical processes can accomplish this separation. However, over the years Purex has become the most commonly used and accepted process. Purex involves the dissolution of irradiated nuclear fuel in nitric acid, followed by separation of the uranium, plutonium, and fission products by solvent

extraction using a mixture of tributyl phosphate in an organic diluent.

Purex facilities have process functions similar to each other, including: irradiated fuel element chopping, fuel dissolution, solvent extraction, and process liquor storage. There may also be equipment for thermal denitration of uranium nitrate, conversion of plutonium nitrate to oxide metal, and treatment of fission product waste liquor to a form suitable for long term storage or disposal. However, the specific type and configuration of the equipment performing these functions may differ between Purex facilities for several reasons, including the type and quantity of irradiated nuclear fuel to be reprocessed and the intended disposition of the recovered materials, and the safety and maintenance philosophy incorporated into the design of the facility. A plant of the reprocessing of irradiated fuel elements, includes the equipment and components which normally come in direct contact with and directly control the irradiated fuel and the major nuclear material and fission product processing streams.

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop, or shear irradiated nuclear reactor fuel assemblies, bundles, or rods.

(2) Critically safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Solvent extraction equipment.

Especially designed or prepared solvent extractors such as packed or pulse columns, mixer settlers or centrifugal contractors for use in a plant for the reprocessing of irradiated fuel. Because solvent extractors must be resistant to the corrosive effect of nitric acid, they are normally fabricated to extremely high standards (including special welding and inspection and quality assurance and quality control techniques) out of low carbon stainless steels, titanium, zirconium or other high quality materials.

(4) Chemical holding or storage vessels.

Especially designed or prepared holding or storage vessels for use in a plant for the reprocessing of irradiated fuel. Because holding or storage vessels must be resistant to the corrosive effect of nitric acid, they are normally fabricated of materials such as low carbon stainless steels, titanium or zirconium, or other high quality materials. Holding or storage vessels may be designed for remote operation and maintenance and may have the following features for control of nuclear criticality:

(i) Walls or internal structures with a boron equivalent of at least 2 percent, or

(ii) A maximum diameter of 7 inches (17.78 cm) for cylindrical vessels, or

(iii) A maximum width of 3 inches (7.62 cm) for either a slab or annular vessel.

(5) Plutonium nitrate to plutonium oxide conversion systems. Complete systems especially designed or prepared for the conversion of plutonium nitrate to plutonium oxide, in particular adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

(6) Plutonium metal production systems. Complete systems especially designed or prepared for the production of plutonium metal, in particular adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

(7) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

Dated at Rockville, Maryland, this 13th day of July, 1990.

For the Nuclear Regulatory Commission.

James M. Taylor

Executive Director for Operations.

[FR Doc. 90-17466 Filed 7-25-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 45

[Order No. 1436-90]

Purchase of Forfeited Property

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule generally prohibits Department of Justice employees from purchasing property, or using property purchased by a spouse or dependent child, that was forfeited to the Government and offered for sale by the Department of Justice or its agents. The prohibition is intended to ensure that there is no actual or apparent use of nonpublic information by Department employees in the purchase of forfeited property. The purpose of the rule is to protect the integrity of the operation of the asset forfeiture program.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Cary Copeland, Director, Executive Office for Asset Forfeiture, United States Department of Justice, Room 6324, Constitution Avenue and 10th Street NW., Washington, DC 20530, (202) 786-4115.

SUPPLEMENTARY INFORMATION: The asset forfeiture program is authorized by dozens of statutes addressing many areas of criminal activity, including 21 U.S.C. 853, 881 (drug forfeitures); 18 U.S.C. 1963 (RICO forfeitures); 18 U.S.C. 981, 982 (civil and criminal forfeitures under numerous cited predicates); and 19 U.S.C. 1616a (customs forfeitures). The primary objective of the forfeiture sanction is to deprive criminals of property used in or acquired with profits from the proscribed criminal activities. The program, which is funded by the sale of the forfeited property, has been given a high priority by the Attorney General as one of the most effective new weapons against crime. It must, therefore, be operated with the utmost integrity.

Justice Department employees in a number of Department components are involved in the asset forfeiture process from the seizure of property through its custody, forfeiture and ultimate sale. To avoid the actual or apparent use of nonpublic information in the purchase of forfeited property, this rule will prohibit all Department employees from purchasing forfeited property or using forfeited property purchased independently by a spouse of dependent child. A very narrow waiver provision will allow an employee, with the written approval of the head of the employee's component, to purchase or use forfeited property when the purchase is not based on nonpublic information and there is a compelling reason for the purchase or use that outweighs any appearance of impropriety. This rule will become part of the standards of conduct for Justice Department employees.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This regulation is not a major rule within the meaning of Executive Order 12291. Therefore, a regulatory impact analysis has not been prepared. Finally, this regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 45

Standards of Conduct.

Accordingly, 28 CFR part 45 is amended as follows:

PART 45—STANDARDS OF CONDUCT

1. The authority citation for Part 45 is revised to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 901 *et seq.*; EO 11222, 3 CFR 1964-1965 Comp.; 5 CFR Part 735; EO 12674.

2. Section 45.735-18 is added to read as follows:

§ 45.735-18 Purchase of forfeited property.

(a) No employee shall purchase, either directly or indirectly through an agent or intermediary, any property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents.

(b) No employee shall use such forfeited property if it was purchased independently by a spouse or dependent child.

(c) These prohibitions may, upon request, be waived in writing by the

head of the employee's division, who must make a determination that:

(1) Such purchase is not based upon nonpublic information that came to the employee's attention by reason of his status as a Department of Justice employee; and

(2) The employee's reason for purchasing or using the property is so compelling as to outweigh any appearance of impropriety.

(d) Copies of all waivers granted pursuant to paragraph (c) of this section shall be forwarded to the Deputy Attorney General.

Dated: July 18, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-17451 Filed 7-25-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; amendment.

SUMMARY: On March 30, 1990, an interim final rule was published implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico. These Amendments provide, in part, that the increases in the FLSA minimum hourly wage rates from $3.35 to $3.80 (effective April 1, 1990) and to $4.25 (effective April 1, 1991) may be phased in over longer periods of time in the Commonwealth, based on the average hourly wage rates paid in particular industries as those industries are defined in the Standard Industrial Classification (SIC) Code. In preparing this interim final rule, the Department found that only limited employment and earnings information was available for employees in agriculture. While the available information was considered sufficient for a short-term interim final rule placing agriculture within the phase-in schedules provided for the Commonwealth, the Department requested the Commonwealth to conduct an additional study of the wages paid agricultural workers and to report its additional findings to the Department by June 1, 1990. The interim final rule also stated that the provision with respect to agriculture would expire on its own terms on August 1, 1990, and, if the survey was not timely completed and forwarded to the Department, all employers in agriculture would become subject to the full minimum wage increases to $3.80 and $4.25 required by the 1989 Amendments retroactive to April 1, 1990.

The survey was conducted as requested but insufficient time existed to permit the Department to complete its review prior to the August 1, 1990, deadline. Thus, the Department is now extending the August 1 deadline with respect to agriculture to October 1, 1990. During this time, the provisions of the original interim final rule published on March 30 with respect to agriculture will remain in effect.

EFFECTIVE DATE: This amendment to the interim final rule is effective on July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1990, (55 FR 12114) interim final regulations were published in the **Federal Register** implementing the minimum wage provisions of the 1989 FLSA Amendments in Puerto Rico. With respect to agricultural activities in Puerto Rico (SIC major groups 01, 02, 08, and 09), the Department found, after reviewing available information on agriculture, that only limited employment and hourly earnings data were available for agricultural workers from various sources within the Commonwealth government, and that no survey had been conducted. (Agricultural activities included within SIC Major Group 07, Agricultural Services, were surveyed and treated previously under nonmanufacturing industries.)

The information available at the time the interim final rule was prepared provided a basis for concluding that it was probable that average hourly earnings in agriculture fell below $4.00 an hour except in sugarcane farming activities where the average was probably above $4.00 an hour but less than $4.65. Accordingly, a determination was made to place agricultural workers under Tier 3, the tier applicable to industries in which the average hourly wage rate is less than $4.00 and that is subject to a six-year phase-in of the minimum wage increases, with the exception of sugarcane workers who were placed under Tier 2, applicable to industries in which the average hourly wage rates are greater than $4.00 but less than $4.65 and subject to a five-year phase-in.

While the available information was considered sufficient for purposes of placement under the interim final rule, the Department, pursuant to its verification responsibilities under the statute, requested the Commonwealth government to conduct a more complete and thorough study of the wages paid agricultural workers. The survey was to be conducted for a current representative time period and was to cover various crop categories. The Commonwealth agreed to conduct this survey and to forward the results to the Department for review not later than June 1, 1990.

In the interim final rule, the Department stated that the tier placements for agriculture were being done on a interim basis and would expire on their own terms on August 1, 1990, if the survey to be conducted by the Commonwealth was not timely completed and forwarded to the Department for review and evaluation. The Commonwealth provided full cooperation to the Department in developing and conducting the survey and submitted the completed survey to the Department prior to June 1, 1990.

The Department has found that additional time is required to complete a thorough review of this survey and that this review cannot be accomplished prior to the August 1, 1990, deadline. Therefore, the Department is extending the expiration date of the interim final rule with respect to agriculture to October 1, 1990. During this time, the conditions stated in the interim final rule remain in effect.

II. Procedural Matters

The application of the Paperwork Reduction Act, Executive Order 12291, and Regulatory Flexibility Act to this rule is discussed in the Preamble to the interim final rule published on March 30, 1990 (62 FR 12114).

Administrative Procedure Act

The Secretary has determined that the public interest requires immediate issuance of this amendment in order to continue to comply with the requirements of the 1989 Amendments. Insufficient time existed between the receipt of the special survey and August 1, 1990, for the Department to complete its review of the data submitted. Failure to extend the expiration date to October 1, 1990, would result in employers in

agriculture not being able to utilize the minimum wage relief intended by Congress.

Accordingly, the Secretary for good cause finds, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this amendment to the interim final rule cannot be published 30 days before its effective date. There was insufficient time for the Department to complete its review of the data furnished by the Commonwealth prior to the August 1, 1990, deadline.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Law Enforcement, Minimum wages, Puerto Rico, Incorporation by reference.

Signed at Washington, DC, on this 23d day of July, 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

PART 510—IMPLEMENTATION OF THE MINIMUM WAGE PROVISIONS OF THE 1989 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT IN PUERTO RICO

1. The authority citation for part 510 continues to read as follows:

Authority: Sec. 4, Pub. L. 101–157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

2. In § 510.20, paragraph (d) is revised to read as follows:

§ 520.20 Wage surveys in Puerto Rico.

* * * * *

(d) *Agriculture.* The supplemental survey conducted for nonmanufacturing industries did not include agricultural employers. The Commonwealth agreed to conduct a study of wages paid agricultural workers. The survey was to be conducted for a current representative time period and to cover various crop categories. The results of the survey were to be forwarded to the Department no later than June 1, 1990, in order to be incorporated in a final regulation. The Commonwealth has completed the survey and submitted it to the Department for review. The Department is conducting its review of this survey and will incorporate, as appropriate, the results of this survey in a subsequent rule.

* * * * *

3. Section 510.23 is revised to read as follows:

§ 510.23 Agricultural activities eligible for minimum wage phase-in.

Based on limited information available at the time of the adoption of 29 CFR part 510, the Department concluded that it was probable that average hourly earnings fell below $4.00 per hour in all agricultural activities except sugarcane farming. In sugarcane farming, it was probable that average earnings fell between $4.00 and $4.65 per hour. Accordingly, a determination was made to categorize, on an interim basis, sugarcane workers in Tier 2 and all other agricultural workers in Tier 3 pending the receipt of more complete data from the Commonwealth no later than June 1, 1990. This interim placement was scheduled to expire on August 1, 1990, following review of the data submitted and any correction in the applicable tier found necessary as a result of such review made retroactive to April 1, 1990. A survey was completed and forwarded by the Commonwealth prior to June 1, 1990, but insufficient time existed to permit the Department to conduct a thorough review of this survey prior to the August 1, 1990 date. Thus, the Department is extending the interim placements of agricultural workers under Tiers 2 (sugarcane) and 3 (all other agricultural workers) until October 1, 1990. Any correction in the applicable tier with respect to agriculture that may be necessary following completion of the review of the data submitted will be retroactive to April 1, 1990.

[FR Doc. 90–17472 Filed 7–25–90; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–49]

Special Local Regulations for Marine Events; U.S. Coast Guard Fair/Dual Commissioning Ceremony; Elizabeth River, Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the U.S. Coast Guard Fair and the dual commissioning ceremony of the Coast Guard Cutters FORWARD and LEGARE to be held on August 4, 1990 at Portsmouth, Virginia. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 11 a.m. to 11 p.m. August 4, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, there is insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Coast Guard submitted an application dated June 11, 1990 to hold the U.S. Coast Guard Fair and dual commissioning ceremony of the Coast Guard Cutters FORWARD and LEGARE as a part of the Coast Guard bicentennial celebration. The U.S. Coast Guard Fair will consist of mock law enforcement boardings, buoy handling and helicopter rescue demonstrations, and static displays of U.S. Coast Guard boats, cutters, and helicopters. The dual commissioning ceremony will be held on the Southern Branch of the Elizabeth River at the foot of High Street at Portsmouth, Virginia. A fireworks display will follow the dual commissioning ceremony. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 including an extension of the regulated area of the Southern Branch of the Elizabeth River are being implemented for this event. In addition to regulating the area for the safety of life and property, this regulation also authorizes the Patrol Commander to regulate the operation of the Berkley

drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary and the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and determined the final rule does not raise sufficient implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and determined categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–0549 is added to read as follows:

§ 100.35–0549 Elizabeth River, Southern Branch Elizabeth River, Portsmouth, Virginia.

(a) *Definitions.* (1) Regulated area. The waters of the Elizabeth River as defined by 33 CFR 100.501 and the waters of the Southern Branch of the Elizabeth River south of those defined by 33 CFR 100.501 from shore to shore bounded to the south by a line drawn from the Portsmouth Seawall at latitude 36°49'57.0" North, longitude 76°17'56.5" West, to the foot of the Norfolk Shipbuilding and Drydock, Berkley Plant, Pier No. 1, located at latitude 36°49'56.5" North, longitude 76°49'17.34.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective from 11 a.m. to 11 p.m. August 4, 1990.

Dated: July 17, 1990.

P. A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90–17420 Filed 7–25–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 151

[CGD 88–002A]

RIN 2115–AD40

Prevention of Pollution From Ships; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule: change in effective date.

SUMMARY: On May 2, 1990, the Coast Guard published an interim final rule in the **Federal Register** (55 FR 18578) amending the Coast Guard's garbage pollution regulations by adding waste management plan and placarding requirements for certain U.S. ships, including manned fixed or floating platforms. The effective date of the interim final rule was July 31, 1990. This document suspends the applicability of the placarding requirements for ships operating on the Great Lakes, for manned fixed platforms, and for manned floating platforms not in transit.

EFFECTIVE DATES: This document is effective July 26, 1990. The effective date for 33 CFR 151.59 as it applies to ships operating on the Great Lakes, to manned fixed platforms, and to manned floating platforms not in transit is suspended indefinitely.

FOR FURTHER INFORMATION CONTACT: Lt James H. McDowell, Project Manager, Port Safety and Security Division (G–MPS), (202) 267–0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: One provision of the interim final rule (§ 151.59(a)(1)) would require each manned U.S. ship (other than a fixed or floating platform) that is 26 feet or more in length to post placards listing certain specific prohibitions against garbage discharges. Several comments stated that placards displaying this information may mislead the reader to assume that garbage may be discharged from ships operating more than three nautical miles of the nearest land on the Great Lakes. In fact, the discharge of garbage in the navigable waters of the U.S., including the Great Lakes, is prohibited by existing 33 CFR 151.66.

Another provision of the interim final rule (§ 151.59(a)(2)) would require that manned fixed or floating platforms post the same placards. Several comments pointed out that this provision should apply only to manned floating platforms when in transit (i.e., when in the "ship" mode rather than in the "platform" mode). Otherwise, this provision would conflict with existing 33 CFR 151.73 on garbage discharge requirements for platforms "engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources."

In order to allow time to resolve these conflicts and to avoid making unclear or incorrect provisions effective, the Coast Guard is suspending indefinitely the effective date for § 151.59 as that section applies to ships operating on the Great Lakes, to manned fixed platforms, and to manned floating platforms not in transit. The effective date for § 151.59 as that section applies to ships not operating on the Great Lakes and to manned floating platforms in transit continues to be July 31, 1990, as stated in the interim final rule.

All other provisions of the interim final rule, including the waste management plan requirements (§ 151.57), will become effective on July 31, 1990, as stated in the interim final rule.

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR 1971–1975 Comp., p 793; 49 CFR 1.46.

Dated: July 19, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-17421 Filed 7-25-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 88-139; (FCC 90-254)]

Reorganization and Deregulation of Part 97, Rules Governing the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action denies petitions for reconsideration from The Radio-Television News Directors Association, *et al.* (RTNDA) and Karl Pagel (Pagel), and grants in part a petition from David Popkin (Popkin). All three petitioners had requested reconsideration of various aspects of the Commission's Order of May 31, 1989, which reorganized the amateur service rules and codified existing policies. The rule amendments adopted are necessary so that the amateur service rules will be current with respect to licensing policies and contemporary postal terminology, and will be accurate with respect to emission types and station identification procedures. The rule amendments will benefit amateur operators by making current and accurate amateur rules available to them.

EFFECTIVE DATE: September 10, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted July 9, 1990, and released July 20, 1990. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Memorandum Opinion and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary and Memorandum Opinion and Order

1. The Commission received three petitions for reconsideration of its Report and Order of May 31, 1989, 54 FR 25857, June 20, 1989, which reorganized the amateur service rules and codified existing policies. RTNDA requested a change in the rule prohibiting amateur stations from providing communications facilities to support broadcasting operations, except when there is an immediate danger to life or property. RTNDA wanted the immediate safety of life or property provision expanded to include information relating to any important news event, or, in the alternative, elimination of the immediacy factor. Pagel requested that the amateur service rules be amended to show the amateur service as the primary user of the 1.25 meter band as of January 1, 1990. Popkin requested language changes to clarify the rules and also wanted rule changes to reflect contemporary United States Postal Service terminology and licensing procedures.

2. The Commission denied RTNDA's petition and the petition filed by Pagel. As to RTNDA's request, the Commission said that the prohibition against use of amateur stations for commercial purposes, including broadcasting, must be retained so that amateur service frequencies would not be converted to commercial or broadcasting purposes. With respect to frequency sharing of the 1.25 meter band between the amateur service and the Government radiolocation service, the Commission stated that Pagel's request was premature because elimination of amateur use of a portion of the 1.25 meter band will not be implemented in the amateur service rules until the current land mobile proceeding concerning the band is completed.

3. Popkin's petition for reconsideration was granted in part and denied in part. The Commission denied Popkin's request to permit the manual retransmission of time signals and weather information. As a result of Popkin's requests, the Commission made certain language clarifications in the rules and conformed the rules to reflect contemporary postal terminology concerning a post office box, rural delivery service numbers, or general delivery.

4. The amended rules are set forth at the end of this document.

5. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rules will not have a significant impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communications. See 47 CFR 97.3(a)(4).

6. These rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

7. The amended rules are issued under the authority of 47 U.S.C. 303(r).

List of Subjects in 47 CFR Part 97

Emission types, Licenses, Station identification, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.19(b) is revised to read as follows:

§ 97.19 Application for a renewed or modified license.

* * * * *

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, P.O. Box 1020, Gettysburg, PA 17326.

* * * * *

3. The last sentence of § 97.21 is revised to read as follows:

§ 97.21 Mailing address and station location.

* * * (A post office box, rural delivery service number, or general delivery is unsuitable as a station location).

4. Section 97.119(c) is revised to read as follows:

§ 97.119 Station identification.

* * * * *

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark. If the indicator is self-assigned, it must be included after the call sign and must not conflict with any other indicator specified by the FCC Rules or with any prefix assigned to another country.

* * * * *

5. The introductory paragraph of § 97.301 is revised to read as follows:

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region, and outside any area where the amateur service is regulated by any authority other than the FCC.

* * * * *

6. In the table in § 97.305(c), after the entries for the HF wavelength band, revise the VHF entries and add the UHF entries, to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) A station may transmit the following emission types on the frequencies indicated, as authorized to the control operator, subject to the standards specified in § 97.307(f) of this part.

Wavelength band	Frequencies	Emission types authorized	Standards—See § 97.307(f), paragraph
*	*	*	*
VHF:			
6 m	50.1–51.0 MHz	MCW, phone, image, RTTY, data	(2), (5).
Do	51.0–54.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
2 m	144.1–148.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
1.25 m	Entire band	MCW, phone, image, RTTY, data, test	(2), (6), and (8).
UHF:			
70 cm	Entire band	MCW, phone, image, RTTY, data, SS, test	(6), (8).
33 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
23 cm	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12).
13 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
*	*	*	*

[FR Doc. 90–17393 Filed 7–25–90; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 336

RIN 3067–AB47

Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rulemaking adds a new part 336 in title 44 Code of Federal Regulations, Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use, Chapter I, Federal Emergency Management Agency, subchapter E, Preparedness. New part 336 responds to Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This part establishes guidance for Federal departments and agencies to determine which nonindustrial facilities meet essential Federal Government requirements during a national security emergency. The Director, FEMA, is to provide policy guidance for use by Federal departments and agencies in their mobilization plans and programs. The Director is also to provide the President with a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Gary Conrad Jr., Planning Specialist, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 618, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–3578.

SUPPLEMENTARY INFORMATION: On June 22, 1989, FEMA published a proposed regulation in the **Federal Register** (54 FR 26213) to:

(a) Provide policy guidance for the predesignation of nonindustrial facilities, both government and private, for essential needs in a national security emergency;

(b) Provide criteria for the Federal departments and agencies to assess and select on a priority basis the predesignation of nonindustrial facilities that are needed for national security emergencies; and

(c) Provide planning guidance for the Federal departments and agencies to develop plans and programs for the usage of nonindustrial facilities and avoid or minimize disruptions of essential services during any national security emergency.

Seven responses to the invitation for comments were received. Five of the commentors either concurred in the proposed rule or had no comments.

The sixth commentor requested that Section 336.7 be enhanced by providing a provision requiring Federal departments and agencies to notify State emergency planning agencies that arrangements have been made with the owners and operators of a predesignated facility. FEMA agrees with this suggestion, since the underlying purpose of this program is to ensure coordination of emergency nonindustrial facility use between Federal, and State and local governments. Part 336.7 has been revised to reflect the addition of this request. The final commentor had several comments and suggestions. The first suggestion was that § 336.5(e) should be revised to reflect that NIF requests will be coordinated with State agencies to ensure that conflicts between civilian and military requirements are avoided. FEMA has considered this recommendation and has made appropriate changes to § 336.5(e). FEMA agrees with the

commentor's second request that a mechanism should be established to adjudicate conflicting NIF requests. Sections 336.6 and 336.8 have been revised to provide an adjudication system for resolving conflicting NIF requests. The commentor's final two comments were on appendix I of the June 22, 1989 DMO. This appendix does not appear here and will not appear in the CFR. In an effort to adequately address the comments, we have responded to the points raised by the commentor. The first comment raised was technical in nature and appendix I, paragraph c.1.C has been corrected. FEMA, after careful consideration, cannot agree with the commenter's final assertion that FEMA should identify and suggest alternate nonindustrial facilities when a NIF request has been denied because of a predesignation. FEMA believes that the requestor would be best suited to assess their emergency NIF needs and identify alternative NIF locations.

Regulatory Analysis

This Final Rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Certification

This part applies to federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant impact on a substantive number of small entities.

Paper Work Reduction Act

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and OMB implementing regulations 5 CFR 1320.

List of Subjects in 44 CFR Part 336

National preparedness, Intergovernmental relations.

For the reasons set out in the preamble, title 44, chapter I, subchapter E is amended by adding a new part 336 as follows:

PART 336—PREDESIGNATION OF NONINDUSTRIAL FACILITIES (NIF) FOR NATIONAL SECURITY EMERGENCY USE

Sec.
336.1 Purpose.
336.2 Applicability and scope.
336.3 Reference.
336.4 Definitions.
336.5 Background.
336.6 Policy.
336.7 Federal Responsibilities.
336.8 State and Local Government emergency planning agencies.
336.9 Reporting.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949–53 Comp., p. 962; and E.O. 12656 of November 18, 1988, 53 FR 47491;

§ 336.1 Purpose.

(a) This part establishes policy and procedural guidance to assist the Federal departments and agencies in the development of plans for the predesignation and assignment of nonindustrial facilities to ensure that emergency requirements can be met in time of a national security emergency.

(b) Specifically, this part provides:

(1) Policy guidance for the predesignation of nonindustrial facilities for essential needs in a national security emergency.

(2) Criteria guidance for the Federal departments and agencies to assess and select on a priority basis the nonindustrial facilities that are needed for national security emergencies.

(3) Planning guidance for the Federal departments and agencies to develop plans and programs for the usage of nonindustrial facilities and avoid or minimize disruptions of essential services during any national security emergency.

§ 336.2 Applicability and scope.

This part is applicable to all Federal departments and agencies, State and local governments and the private sector and provides policy and procedural guidance for carrying out the NIF program. The NIF program helps ensure our ability to mobilize essential nonindustrial facilities for Department of Defense (DOD) and essential civilian needs in the event of a national security emergency or contingency.

§ 336.3 Reference.

Department of Defense Directive 4165.6, Real Property Acquisition Management and Disposal, dated September 1, 1987, which may be obtained from Headquarters, U. S. Forces Command, Fort McPherson, Georgia 30330–6000, Attn: FCEN–CDP.

§ 336.4 Definitions.

(a) *Agency*. Agency refers to all of the Federal departments and agencies and the State and local entities participating in the NIF program to predesignate nonindustrial facilities.

(b) *Allocation*. Allocation means the NIF predesignation has been granted to the requesting organization.

(c) *Denial*. Denial means that predesignation of a NIF was not allocated due to a conflict between Federal or State NIF requests.

(d) *Graduated Mobilization Response* is a system for integrating mobilization actions designed to respond to ambiguous and/or specific warnings. These actions are designed to mitigate the impact of an event or crisis and reduce significantly the lead time associated with a full national emergency action implementation.

(e) *National security emergency*. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.

(f) *Nonindustrial Facility*. Nonindustrial Facility refers to a unit of real property that can be used for housing, training or another non-industrial purpose; for example hotels, motels, educational institutions, office buildings, and other real estate (*excluding* farms, churches or other places of worship, or private dwelling houses).

(g) *Predesignation*. Predesignation means the advanced identification and screening of a NIF to help ensure there national security emergency.

§ 336.5 Background.

(a) The purpose of the NIF program is to improve the Nation's ability to mobilize nonindustrial facilities for DOD and/or essential civilian needs in times of national security emergencies.

(b) Availability of adequate nonindustrial facilities can be crucial in responding decisively and effectively to emergency situations. In planning for a mobilization surge, military commanders have found existing military housing and training facilities are not adequate to meet the demand of mission requirements. To meet these requirements, access to other nonindustrial facilities has been sought through standby agreements or contracts with the owners and operators

of nonindustrial facilities to supplement government installations.

(c) Although NIF is principally a Department of Defense program, other Federal departments and agencies and State and local agencies may also have nonindustrial facilities requirements.

(d) Executive Order 12656 directs Federal departments and agencies to prepare national plans and programs such as NIF, to ensure an appropriate state of readiness to respond to a national security emergency.

(e) In the development of the plans for use of these facilities, including privately-owned facilities, different facilities, including privately-owned facilities, different requirements for national security emergencies must be considered. Such emergency conditions could create a conflicting requirement for the same facility by Government entities. FEMA will coordinate the NIF requests by DoD components and other Federal agencies with the appropriate State agencies to ensure that conflicts between civilian and military requirements are avoided.

§ 336.6 Policy.

(a) The policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each Federal Department and agency shall enhance its emergency preparedness response capabilities and plans through the use of nonindustrial facilities in national security emergencies.

(b) Federal Departments and agencies will determine their requirements for nonindustrial facilities and shall identify the specific facilities needed to meet these emergency requirements.

(c) Federal Departments and agencies will develop their nonindustrial facilities requirements and planning in conformance with Stage 3 of the Graduated Mobilization Response System to provide appropriate and effective response options for consideration in reacting to a national security emergency.

(d) Federal Departments and agencies will develop contingency plans to utilize these facilities in an emergency in order to minimize response time and costs for utilization or construction of additional nonindustrial facilities.

(e) Utilizing national priorities established in consultation with the National Security Advisor, FEMA will resolve competing requests for nonindustrial facilities usage in national security emergencies. Competing requests that cannot be resolved by FEMA may be resolved through referral to the National Security Advisor.

§ 336.7 Federal responsibilities.

(a) *Departments and Agencies.* The heads of Federal departments and agencies are responsible for:

(1) Meeting their emergency preparedness facilities requirements by developing programs for the selection and predesignation of nonindustrial facilities;

(2) Assessing essential emergency requirements and plans for the use of alternative nonindustrial facilities to meet critical demands during and following national security emergencies;

(3) Submitting the NIF requests to the FEMA Regional Director in the area where the facility is located. Copies of the applications and instructions may be obtained by writing the appropriate FEMA regional office listed in Appendix A to this part.

(4) Making the necessary arrangements with the owners and operators of the predesignated nonindustrial facility to permit a rapid and effective transition from routine to emergency operations and the effective use of nonindustrial facilities in emergency operations.

(5) Notifying the appropriate FEMA regional office that the necessary arrangements with the owners and operators for the use of nonindustrial facilities have been completed.

(b) *The Federal Emergency Management Agency (FEMA).* The Director of the FEMA or designee, shall:

(1) Convey national security emergency preparedness policies of the National Security Council and provide planning guidance and assistance to the Federal departments and agencies;

(2) Coordinate emergency planning programs and national security emergency preparedness activities of the Federal Government, including the NIF Program;

(3) Provide procedures and guidance for coordinating the predesignation of nonindustrial facilities;

(4) Resolve conflicting NIF requests that cannot be resolved at the regional office level and refer appropriate issues to the National Security Advisory for resolution;

(c) *The FEMA Regional Directors shall:* (1) Advise and assist State and local governments and, as appropriate, private organizations on the NIF program.

(2) Seek clearance with appropriate State authorities on nonindustrial facilities selected for Federal use in their States.

(3) Coordinate arrangements between Federal departments and agencies; and with State authorities on facility predesignation and allocation.

(4) Consider the multi-use of predesignated facilities based on competing requirements for the same facility, unless single use is necessary or appropriate for the national defense.

(5) Forward to FEMA Headquarters competing NIF requests that cannot be resolved at the regional level.

(6) Provide the appropriate State emergency planning agencies with a copy of a periodic report of Predesignated Nonindustrial Facilities for their particular region.

§ 336.8 State and Local Government emergency planning agencies.

(a) State and local emergency planning agencies have a crucial role to play in achieving a coordinated program to predesignate nonindustrial facilities to meet emergency requirements. Consequently, it is essential that precise plans are developed for the conditions under which each facility is to be used in order to provide efficient and effective means to accommodate civilian and military requirements in accessing nonindustrial facilities in the event of a national security emergency, to avoid conflicting requirements between Federal, and State and local agencies.

(b) In response to requests for clearance by FEMA regional offices of designations of nonindustrial facilities by Federal departments and agencies, the appropriate State agency will review the request and provide an appropriate reply.

§ 336.9 Reporting.

The Director of FEMA may provide the President with periodic assessments of the Federal departments and agencies capability to respond to national security emergencies. Pursuant to section 201(15) of Executive Order 12656, departments and agencies, as appropriate, shall consult and coordinate with the Director of FEMA to ensure that their activities and plans are consistent with current National Security Council guidelines and policies. An evaluation of the programs of Federal departments and agencies to predesignate nonindustrial facilities may be included in this report.

Appendix A—FEMA Regional Offices

The addresses for the regional office contacts for FEMA Region I through X are as follows:

FEMA Region I, Chief, Emergency Management and National Preparedness, Programs Division, J.W. McCormack Post Office and

Courthouse Building, Room 442, Boston, MA 02109
FEMA Region II, Chief, Emergency Management and National Preparedness Division, 26 Federal Plaza, Room 1338, New York, NY 10278
FEMA Region III, Chief, Emergency Management and National Preparedness, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106
FEMA Region IV, Chief, Emergency Management and National Preparedness Division, 1371 Peachtree Street, N.E., Suite 700, Atlanta, GA 30309
FEMA Region V, Chief, Emergency Management and National Preparedness Division, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698
FEMA Region VI, Chief, Emergency Management and National Preparedness Division, Federal Regional Center, 800 N. Loop 288, Denton, TX 76201–3698
FEMA Region VII, Chief, Emergency Management and National Preparedness Division, 911 Walnut Street, Room 200, Kansas City, MO 64106
FEMA Region VIII, Chief, Emergency Management and National Preparedness Division, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267
FEMA Region IX, Chief, Emergency Management and National Preparedness Division, Building 105, Presidio of San Francisco, CA 94129
FEMA Region X, Chief, Emergency Management and National Preparedness Division, 130 228th Street, Southwest, Federal Regional Center, Bothell, WA 98021–9796

Dated: July 17, 1990.

Antonio Lopez,

Associate Director, National Preparedness Directorate, Federal Emergency Management Agency.

[FR Doc. 90–17377 Filed 7–25–90; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 64

[FCC 90–257]

Delegation of Authority to the Chief, Common Carrier Bureau, and Technical Corrections and Deletions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 0.291(b) of the Commission's Rules regarding the delegation of authority from the Commission to the Chief, Common Carrier Bureau. The revised rule denies the Bureau authority to promulgate regulations or orders prescribing permanent depreciation rates for common carriers, or to prescribe interim depreciation rates to be effective more than one year, pursuant to section 220 of the Communications Act. Subject to this specific, limited prohibition of authority, however, the Bureau now possesses all other authority available to the Commission under sections 219 and 220 of the Act. The Commission has determined that expanding the Bureau's authority to act pursuant to sections 219 and 220 of the Communications Act will facilitate the prompt and orderly conduct of the Commission's business. This action also amends § 1.791 of the Commission's Rules to correctly cross-reference part 32, which superseded part 31 on January 1, 1988. In addition, this action amends § 64.902 to remove an outdated cross-reference contained in that rule. Finally, this action removes §§ 1.792, 1.801, 1.804, and 1.812 of the Commission's Rules; these sections contain obsolete reporting requirements for common carriers and cross-reference other rules which the Commission previously removed.

EFFECTIVE DATE: July 26, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard K. Welch, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 90–257, adopted July 9, 1990, and released July 20, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Report and Order

Section 0.291 of our rules governs the delegation of authority relating to the regulation of telecommunications common carriers from this Commission to the Chief, Common Carrier Bureau. Subsection (b) of that rule currently denies the Bureau authority to promulgate regulations or orders pursuant to sections 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 219, 220, subject to four discrete exceptions where we have granted the Bureau authority to perform certain specific, limited functions.

We have reviewed the current structure of § 0.291(b) and conclude that revising subsection (b) to expand the Bureau's authority to act pursuant to sections 219 and 220 of the Communications Act will facilitate the prompt and orderly conduct of this Commission's business. Today we adopt a revised version of § 0.291(b) which denies the Bureau authority to engage in one important function under section 220 of the Act. Under the revised rule, the Bureau may not prescribe permanent depreciation rates for common carriers, or interim depreciation rates to be effective more than one year, pursuant to section 220. Otherwise, the Bureau now possesses authority to engage in all other functions under sections 219 and 220 of the Act. This includes authority to issue orders concerning the Commission's statutory right of access to carrier documents and records pursuant to section 220(c), and to impose forfeitures pursuant to section 220(d).

We also amend § 1.791 of our rules to correctly cross-reference part 32, rather than part 31. In addition, we amend § 64.902 to remove an outdated cross-reference to § 31.01–11. These technical corrections are necessary because part 32 superceded part 31 on January 1, 1988. Finally, we remove §§ 1.792, 1.801, 1.804, and 1.812. These sections contain outdated reporting requirements for common carriers and cross-reference other rules which we previously removed.

Notice and comment procedures are not required by the Administrative Procedure Act prior to enactment of these rule changes because the amendments relate to internal Commission organization, procedure, or practice. We have analyzed these rule changes with respect to the Paperwork Reduction Act and have found that they contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

Ordering Clauses

Accordingly, *It is Ordered*, pursuant to sections 4(i), 4(j), 5(b), 5(c)(1), 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 155(c)(1), 219, and 220, that parts 0, 1, and 64 of the Commission's Rules

are amended as set forth at the end of this document.

It is further ordered That because they concern rules of internal Commission organization, procedure, or practice these amendments are effective upon publication in the **Federal Register** on July 26, 1990. *See* 5 U.S.C. 553(d); 47 CFR 1.427(b) (1989).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies).

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Rule Changes

Parts 0, 1, and 64 of title 47 of the Code of Federal Regulations are amended as set forth below.

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 0.291 is amended by revising paragraph (b) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(b) *Authority concerning section 220 of the Act.* The Chief, Common Carrier Bureau shall not have authority to promulgate regulations or orders prescribing permanent depreciation rates for common carriers, or to prescribe interim depreciation rates to be effective more than one year, pursuant to section 220 of the Communications Act of 1934, as amended.

* * * * *

PART 1—PRACTICE AND PROCEDURE

3. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

4. Section 1.791 is revised to read as follows:

§ 1.791 Reports and requests to be filed under part 32 of this chapter.

Reports and requests shall be filed either periodically, upon the happening of specified events, or for specific approval by class A and class B telephone companies in accordance with and subject to the provisions of part 32 of this chapter.

5. Section 1.792 is removed.

§ 1.792 [Removed]

6. Section 1.801 is removed.

§ 1.801 [Removed]

7. Section 1.804 is removed.

§ 1.804 [Removed]

8. Section 1.812 is removed.

§ 1.812 [Removed]

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

9. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

10. Section 64.902 is revised to read as follows:

§ 64.902 Transactions with affiliates.

Except for carriers which employ average schedules in lieu of determining their costs, all carriers subject to § 64.901 are also subject to the provisions of § 32.27 of this chapter concerning transactions with affiliates.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 90–17391 Filed 7–25–90; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 22

[CC Docket No. 88–135; FCC 90–255]

Height and Power Increases in the Public Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order on Reconsideration amends § 22.117, 22.502, 22.503, 22.504, 22.505, and 22.506 of the Commission's rules and permit increases in height and power limitations in the Public Mobile Service (PMS). The amendments will enhance the efficiency of PMS operations and will provide service to the public with greater speed and efficiency.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Jay O'Connor or Linda Dubroof, Mobile Services Division, Common Carrier Bureau (202) 632–0914 or 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, in CC Docket No. 88–135, adopted July 3, 1990 and released July 20, 1990. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

1. In this Order on Reconsideration, the Commission has amended its Report and Order, released June 29, 1989 54 FR 28816, July 10, 1989, which permitted antenna height and effective radiated power (ERP) increases for Public Mobile Service (PMS) facilities whose interference contours do not exceed the interference contours of existing co-channel stations which are operated under the control of the same licensee. In the Report and Order, the Commission adopted rules which permitted increased ERP in the 35, 150, and 450 MHz frequency bands, but retained the antenna height limitations in the 43 and 900 MHz frequency bands. On reconsideration, the Commission has determined that an increase in permissible antenna height in the 43 MHz frequency band would reduce interference to TV receivers because, by allowing increased heights, the reduction of field strength near the transmitter would reduce interference and would increase licensee flexibility in this frequency band. Additionally, on reconsideration, the Commission concluded that the potential for adjacent channel interference to private radio carriers was not sufficient to justify a total ban on increased power in the Order's five specific adjacent channel frequencies. Moreover, the Commission permitted greater antenna heights for 900 MHz channels utilizing a new minimum separation distance table to provide protection to the new transmitters operating at greater heights and power. The Commission also permitted 931 MHz nationwide paging channels to operate with a maximum power of 3500 watts and permitted 931 MHz licensees to exceed the existing height and power limitations. On

reconsideration, the Commission retained the blanketing rule to delineate the responsibility of common carriers in order to resolve complaints caused by interference to electronic equipment by common carriers, however, the need for this rule will be reexamined after two years of experience with it in place.

2. Final Regulatory Flexibility Analysis. The rulemaking will enhance the efficiency of PMS operations because fewer transmitters will be needed to cover the same geographic area. In addition, building penetration will be increased and the PMS systems' ability to overcome man-made noise will be improved. Our objective is to provide service to the public with greater speed and efficiency.

The Order takes into consideration the various issues raised by the public concerning the proposed rules. As a result of these comments, whenever possible, we have modified our proposal so as to permit both economical and efficient spectrum use but without creating interference to other services. We have determined no specific alternatives which could accomplish the objective achieved in this rulemaking Order.

3. Paperwork Reduction Act Statement. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on the public. The applicant, under §§ 22.505 and 22.506 of the Rules, is now required to submit a copy of the contour map that the applicant prepared independently to determine if they comply with the Rules.

4. Authority for this Rulemaking is contained in sections 1, 4 (i) and (j), 301, 303 and 309 of the Communications Act of 1934, as amended, and section 503 of the Administrative Procedure Act;

5. Wherefore, for the foregoing reasons, part 22 of the Commission's Rules are Hereby Amended as specified in the Rules section appended to this summary. The amendments adopted in this Order for part 22 licensees will become effective September 24, 1990.

List of Subjects in 47 CFR Part 22

Communications common carriers, Height and power, Reporting and recordkeeping requirements.

Rules

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.117 is amended by revising introductory paragraph (b), and paragraphs (b)(1)(ii) and adding (b)(1)(iii) to read as follows:

§ 22.117 Transmitters.

* * * * *

(b) Additional transmitters. Licensees may construct and operate additional transmitter locations on the same frequency without obtaining prior Commission approval provided:

(1) * * *

(ii) Applications for additional transmitters of 931 MHz band stations are required to certify that the proposed service and interference area(s) are totally encompassed by existing co-channel service and interference area(s).

(iii) Licensees must retain a copy of a completed table MOB III found in FCC Form 401 as part of the licensees' records and this shall be made available to the Commission upon request.

* * * * *

3. Section 22.502 is amended by adding a new paragraph (c) to read as follows:

§ 22.502 Classification of base stations.

* * * * *

(c) classes of stations in the 931 MHz Band:

The following table of heights and powers is used to classify the 931 MHz paging stations:

Average antenna height above average terrain [1]	Station class					
4001–5000	G	G	F	F	F	F
2826–4000	H	G	G	F	F	F
2001–2825	K	H	H	G	F	F
1401–2000	L	K	H	G	G	G
1001–1400	L	L	K	H	G	G
581–1000	L	L	L	L	K	H
0–580	L	L	L	L	L	L
	125	250	500	1000	1860	3500
	Effective radiated power (watts) [2]					

[1] Average of the eight cardinal radials.
[2] For power values [1] falling between those listed above use the next higher figure.

* * * * *

(d) The following table is used to determine the minimum required distance separation between stations in the 931 MHz band:

Station class	Minimum separation between co-channel stations				
L	70				
K	75	78			
H	80	83	86		
G	101	104	107	116	
F	139	142	145	154	171
	L	K	H	G	F
	Station Class				

5. Section 22.504 is amended by revising paragrah (b)(2) to read as follows:

§ 22.504 Reliable service area.

* * * * *

(b) * * *

(2) The reliable service area and interference area for one-way signaling stations in the 931 MHz band is as follows:

Class	Radius of service area (Miles)	Radius of interference area (Miles)
F	52	119
G	35	81
H	26	60
K	23	55
L	20	50

The reliable service area is used to determine whether claims of economic competitive injury are considered. The reliable service area so defined is not entitled to protection from electrical interference from co-channel stations at interference distances greater than those listed.

* * * * *

6. Section 22.505 is amended by revising paragraph (c) to read as follows:

§ 22.505 Antenna height-power limit.

* * * * *

(c) Stations in the 35, 43, 152, and 454 MHz bands, operating in accordance with § 22.506(f), may operate stations at 500 watts effective radiated power or less regardless of the average height of the station's antenna above average terrain.

(1) Stations in the 35, 43, 152, and 454 MHz bands, operating in accordance with § 22.506(f), that exceed 500 watts effective radiated power, shall calculate their interference contours along all radials exceeding 500 watts and 500 feet above average terrain using the following modification to the formula in

the Carey Report for determining the ratio of desired to undesired fields "R":

$R = A + C + K(L_d^2 + L_u^2 + T_u^2)^{1/2}$

where C is determined from the following formula:

C=10xlog(HAAT/500)

(2) Stations operating on the 931 MHz nationwide paging frequencies, 931.8875, 931.9125 and 931.9375 MHz, may operate at a maximum of 3500 watts without antenna height limitation. Stations in the 931 MHz band not operating on the 931 MHz nationwide paging frequencies may operate without regard to height-power reduction if the interference area of the proposed station does not exceed the interference area(s) of existing stations.

(3) An exhibit demonstrating compliance with this section must be submitted with the application. The exhibit must include a map showing the proposed interference contour/area and the interference contour(s)/area(s) used to justify filing an application under this section.

7. Section 22.506 is amended by revising paragraph (f) to read as follows:

§ 22.506 Power.

* * * * *

(f) Proposed base stations, other than those in the air-ground radio service, in the 43 MHz, the 931 MHz and the 470–512 MHz bands whose interference contours/areas do not exceed the interference contour(s)/areas of existing co-channel station(s), which are operated under the control of the same licensee, may operate with the following power limits:

Frequency or frequency band	Maximum effective radiated power
35 MHz	600 watts.
152 MHz	1400 watts.
158.10 MHz	1400 watts.
158.70 MHz	1400 watts.
454 MHz	3500 watts.

(1) All applications proposing the use of the frequencies 152.24, 152.84, 158.10, 158.70, and 454.025 MHz operating with effective radiated powers above 500 watts must show that their base stations are located a required distance from adjacent channel stations: 3.2 miles for the 152 MHz band and 4.4 miles for the frequency 454.025 MHz. All applicants for these adjacent channel frequencies must submit a study of the Commission's Master Frequency File showing that the required separation distances to the adjacent channel base stations have been met. In addition, any common carrier stations operating on 158.70 and 158.10 MHz at powers greater than 500 watts, must submit an analysis of the common carrier land mobile base station cumulative staff study showing that they are located more than 3.2 miles from common carrier stations operating on the base channels 152.21 and 152.81 MHz respectively.

(2) Stations operating on the 931 MHz nationwide paging frequencies, 931.8875, 931.9125, 931.9375 MHz, may operate at a maximum of 3500 watts. Stations in the 931 MHz band not operating on the 931 MHz nationwide paging frequencies may operate at a maximum effective radiated power of 3500 watts if the interference area of the proposed station does not exceed the interference area(s) of existing stations.

(3) An exhibit demonstrating compliance with this section must be submitted with the application. The exhibit must include a map showing the proposed interference contour and the interference contour(s) used to justify filing an application under this section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–17390 Filed 7–25–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 87

[FCC 90–252]

Aviation Services; Licensing of Control Tower Remote Communications Outlet Stations (RCOs) at Airports Without Control Towers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to permit the licensing and operation of remote controlled transmitters and receivers for the purpose of providing air traffic services at small uncontrolled airports near large controlled airports. This action was taken in response to a petition submitted by the Federal Aviation Administration (FAA) to provide for a new type of aeronautical radio station at airports without control towers. RCOs will be controlled from an FAA facility to provide air traffic control services and utilize air traffic control frequencies. Thus, including RCOs under the provisions applicable to airport control tower stations is consistent with our existing regulatory structure.

EFFECTIVE DATE: July 26, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted July 9, 1990, and released July 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Order

1. This order amends part 87 of the Commission's Rules 47 CFR part 87, governing the aviation radio services, to provide for a new type of aeronautical radio station at airports without control towers. The decision by non-Government entities to construct and maintain facilities is voluntary, and the frequencies will be assigned from the frequency blocks currently available for air traffic control purposes. The change is non-controversial and constitutes a minor amendment to the rules in which the public is not likely to be interested. Accordingly, the notice and comment provisions and the effective date requirements of the Administrative Procedure Act are inapplicable. *See* 5 U.S.C. § 553 (b) and (d), 47 CFR § 1.412(b) and 47 CFR § 1.427(b).

2. Because a Notice of Proposed Rule Making is not required, the Regulatory Flexibility Act, Public Law 93–354, does not apply.

3. Authority for this action is contained in sections 4(i), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1) and 303(r).

Ordering Clause

4. *It is Ordered* That part 87 of the Commission's Rules is amended as shown at the end of this document, effective upon publication in the **Federal Register.**

Lists of Subjects in 47 CFR part 87

ATC, RCOs, Control towers, Unicoms, FAA Flight Service Station, Aviation services, Aircraft, Communications equipment.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

Rule Changes

Part 87 of chapter I title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.213 is amended by revising paragraph (b)(1) to read as follows:

§ 87.213 Scope of service.

* * * * *

(b)(1) Unicom transmissions must be limited to the necessities of safe and expeditious operation of aircraft such as condition of runways, types of fuel available, wind conditions, weather information, dispatching, or other necessary information. At any airport at which a control tower, control tower remote communications outlet station (RCO) or FAA flight service station is located, unicoms must not transmit information pertaining to the conditions of runways, wind conditions, or weather information during the hours of operation of the control tower, RCO or FAA service station.

* * * * *

3. Section 87.215 is amended by revising paragraphs (b) and (d) to read as follows:

§ 87.215 Supplemental Eligibility.

* * * * *

(b) Only one unicom will be authorized to operate at an airport which does not have a control tower, RCO or FAA flight service station. At an airport which has a part-time or full-time control tower, RCO or FAA flight service station, the one unicom limitation does not apply and the airport operator and all aviation services organizations may be licensed to operate a unicom on the assigned frequency.

* * * * *

(d) An applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control tower, RCO or FAA flight service station must notify in writing the owner of the airport and all aviation service organizations located at the airport. The notice must include the applicant's name and address, the name of the airport and a statement that the applicant intends to file an application with the Commission for a unicom. The notice must be given within the ten days preceding the filing of the application with the Commission. Each applicant must submit a statement that either notice has been given and include the date of notification, or notice is not required because the applicant owns the airport and there are no organizations that should be notified.

4. Section 87.217 is amended by revising paragraph (a)(1) to read as follows:

§ 87.217 Frequencies.

(a) * * *

(1) 122.950 MHz at airports which have a full-time control tower, full-time RCO or full time FAA flight service station.

* * * * *

5. Section 87.345 is amended by revising paragraph (b) to read as follows:

§ 87.345 Scope of service.

* * * * *

(b) At an airport which has a control tower, control tower remote communications outlet station (RCO) or FAA flight service station in operation, communications by an aeronautical utility mobile station are limited to the management of ground vehicular traffic.

* * * * *

6. Section 87.347 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 87.347 Supplemental eligibility.

(a) Aeronautical utility stations may transmit on unicom frequencies only at airports which have a unicom and a part-time or no control tower, an RCO or an FAA flight service station.

(b) * * *

(2) Identify the vehicle(s) in which the station is to be located; and

* * * * *

7. Section 87.349 is revised to read as follows:

§ 87.349 Frequencies.

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower, RCO or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. The frequency assigned is normally from the band 121.600–121.925 MHz.

(b) The frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis at airports which have a part-time control tower, part-time RCO or part-time FAA flight service station and a unicom.

(c) At airports which have a unicom but no control tower, RCO or FAA flight service station, the frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis. The frequencies available for assignment to unicoms are described in subpart G of this part.

(d) At airports which have no control tower, RCO, flight service station or unicom, the frequency 122.900 MHz is available for assignment to aeronautical utility stations.

8. Section 87.417 is amended by revising paragraph (a) to read as follows:

§ 87.417 Scope of service.

(a) Airport control tower stations (control towers) and control tower remote communications outlet stations (RCOs) must limit their communications to the necessities of safe and expeditious operations of aircraft operating on or in the vicinity of the airport. Control towers and RCOs provide air traffic control services to aircraft landing, taking off and taxing on the airport as well as aircraft transiting the airport traffic area. Additionally, control towers and RCOs can provide air traffic control services to vehicles operating on airport movement areas (see subpart L of this part). Control towers and RCOs must serve all aircraft without discrimination. An RCO must be remotely operated from a control tower or other FAA control facility located at a nearby airport.

* * * * *

9. Section 87.419 is revised to read as follows:

§ 87.419 Supplemental eligibility.

(a) Only one control tower or RCO will be licensed at an airport.

(b) Each application for an RCO must be accompanied by a written statement from the appropriate FAA Regional Office approving the requested RCO operation.

10. Section 87.421 is amended by revising the introductory paragraph and paragraphs (a) through (c) to read as follows:

§ 87.421 Frequencies.

The Commission will assign VHF frequencies after coordination with the FAA. Frequencies in the following bands are available to control towers and RCOs. Channel spacing is 25 kHz.

118.000–121.400 MHz
121.600–121.925 MHz
123.600–128.800 MHz
132.025–135.975 MHz

(a) The frequency 123.100 MHz is available for use by control towers and RCOs at special aeronautical events on the condition that no harmful interference is caused to search and rescue operations in the locale involved.

(b) Frequencies in the bands 200.0–285.0 and 325.0–405.0 kHz will only be assigned to control towers and RCOs authorized to operate on at least one VHF frequency, unless a showing has been made that elimination of VHF service will not adversely affect life and property in the air.

(c) Frequencies in the band 121.600–121.925 MHz are available to control towers and RCOs for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

* * * * *

11. Section 87.425 is revised to read as follows:

§ 87.425 Interference.

Control towers and RCOs must not cause harmful interference to control towers or RCOs at adjacent airports. If interference between adjacent control towers or RCOs exists, the Commission will direct the licensees how to eliminate the interference.

[FR Doc. 90–17392 Filed 7–25–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[Federal Acquisition Circular 84–57]

Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988, Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects FAR 9.406–1(c) and 52.223–6(b)(5) in Federal Acquisition Circular (FAC) 84–57 published in the **Federal Register** on Friday, May 25, 1990 (55 FR 21706). That document implemented the Drug-Free Workplace Act of 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 84–57 correction.

In FR Doc. 90–11721 beginning on page 21706, make the following corrections:

§ 9.406–1 [Amended]

On page 21707, first column, in section 9.406–1, paragraph (c) by adding the words ", or proposed debarment," following the words "A contractor's debarment".

§ 52.223–6 [Amended]

On page 21708, third column, in section 52.223–6, paragraph (b)(5), by removing the reference "(a)(4)(ii)" and inserting in its place "(b)(4)(ii)".

Dated: July 18, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90–17444 Filed 7–25–90; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 89–13; Notice 02]

RIN 2127–AB94

Anthropomorphic Test Dummies; 3-Year Old Child

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's specifications for the 3 year-old child test dummy NHTSA uses to test child restraint systems. Specifications are provided for a new head which has a higher natural frequency response, and is therefore better suited for compliance testing than the present head assembly. In addition, generic specifications are set for two different types of accelerometers which may be used with the dummy. These generic specifications will avoid difficulties associated with a particular accelerometer model when the manufacture of that model is discontinued.

DATES: The effective date for making these amendments to the CFR is August 27, 1990.

Petitions for reconsideration must be received by August 27, 1990.

Until September 1, 1993, each 3 year-old test dummy NHTSA uses to test an add-on child restraint will incorporate, at the manufacturer's option, either the new head assembly specified in § 572.16(a)(1) or the old head assembly specified in § 572.16(a)(2).

Effective September 1, 1993, each 3 year-old dummy NHTSA uses to test an add-on child restraint will incorporate the new head assembly specified in § 572.16(a)(1).

Beginning August 27, 1990, each 3 year-old dummy NHTSA uses to test a built-in child restraint will incorporate the new head assembly specified in § 572.16(a)(1).

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stan Backaitis, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4912.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1989, NHTSA published a notice of proposed rulemaking (NPRM) concerning changes to the agency's specifications for the 3 year-old child test dummy. 54 FR 29071.

First, the agency proposed a new head assembly for the test dummy. The agency also proposed that, if the new specifications were adopted, dummies conforming to them would be used by the agency when evaluating both add-on and built-in restraints. (A built-in child restraint is one that is an integral part of a vehicle.)

This proposal was developed following the implementation on January 22, 1988 of amendments to Standard No. 213 establishing performance and test criteria expressly applicable to built-in restraint systems. Prior to that date, Standard 213 specified performance and test criteria suitable for add-on child restraint systems only. (An add-on restraint is any portable child restraint system.) In tests of add-on systems, the test environment is a standard vehicle seat assembly to which the restraint is attached by a lap belt. During testing, the dummy's head does not contact a rigid surface which is not part of the child restraint system.

During compliance testing of built-in restraint systems, the dummy's head may contact a rigid surface, because the performance of the built-in restraint in protesting the child is determined by testing the restraint in proximity to other parts of the vehicle interior, which may

include rigid surfaces. The current head of the 3 year-old dummy has a relatively low natural frequency response, which may cause it to give unreliable data when the head contacts a rigid surface. The agency believed there was an apparent need to adopt a head that has a natural frequency response (the frequency of a free vibration at which an elastic system starts to vibrate when impacted by a force) appropriate for measuring acceleration resulting from impact between the dummy head and rigid surfaces. (Issues relating to the reliability and validity of the new head as a test device were thoroughly discussed in the NPRM and will not be repeated here.)

Second, the agency proposed two different types of generically designated accelerometers based on frequency response characteristics and location specifications within the dummy. Any accelerometer system conforming with these specifications could be used with the dummy. NHTSA proposed the generic accelerometer specifications because manufacture of the particular accelerometer model specified in part 572 has been discontinued, and because NHTSA tentatively concluded there was no necessity to specify another particular model for use in compliance testing. Any accelerometer that meets the proposed specifications, and is positioned in the test dummy at the specified reference points so that the seismic masses of each sensing element would be aligned with the head and thoracic reference points, would give the same measurements as any other accelerometer with the equivalent impact response characteristics and positioning. NHTSA believed that generic accelerometer specifications would avoid difficulties associated with a particular accelerometer model when the manufacture of that model is discontinued.

Comments on the NPRM

New Head Design

NHTSA received six comments on the proposed changes. The University of Michigan (UM) strongly urged that the agency adopt the new head. The University said that UM has been using the new head in child restraint tests since the early 1980's, and because of the existing head's low natural frequency, would not consider returning to the use of the old design. Volvo Cars of North America also supported the proposed change to the new head, stating that "the change of material in the dummy head will avoid some of the interfering noise occurring in the old dummy head due to its low material frequency."

General Motors Corporation (GM) submitted initial and supplemental comments on the NPRM. In its initial comment, GM said it had yet to test the proposed dummy head, but expressed concern that "the 3-year-old child dummy, with or without the new head, still lacks a reasonable level of impact response biofidelity." (GM's comment reflects the fact that, after NHTSA established specifications for the 3-year-old child test dummy in 1979, GM petitioned the agency to reconsider whether the specified dummy was an appropriate test device. NHTSA analyzed GM's concerns about the dummy and found them to be without merit. Accordingly, the agency denied the petition. (45 FR 82265; December 15, 1980.)) GM did not provide any data or information in its initial comment to the NPRM that convincingly established that NHTSA should refrain from using the 3-year-old child test dummy to test child restraint systems. In its supplemental comment, GM stated that it tested the proposed head assembly and found that head accelerations met the proposed calibration levels when a light coat of a silicone lubricant was applied between the head skin and skull prior to the test. Applying a lubricant is recognized by the Society of Automotive Engineers (SAE) as an acceptable practice and is used by the industry to bring other Part 572 test dummies into calibration specifications. GM stated that it agreed with the proposed specification and use of the new head assembly on the 3-year-old child test dummy.

Ford supported the agency's objective of improving the testing capability of the 3-year-old child dummy, but was concerned that the natural frequency of the proposed fiberglass head "still may have too low a natural frequency to eliminate ringing." Ford seemed to believe that the new head has a natural frequency "just above 1000 Hz," which would cause mechanical ringing of the head at or near that frequency in certain impacts. The commenter suggested that NHTSA consider developing a new dummy head with a structure of aluminum of magnesium, "to provide a natural frequency well above 1000 Hz."

Ford apparently was not aware that the natural frequency of the new head is 3300 Hz, which is 3.3 times higher than the nominal class 1000 filter cut-off frequency referenced in § 572.21 and specified by the SAE for head impact response measurements. ("Performance Measurements of Three-Year-Old Test Dummy Heads, December 1983; Report No. DOT HS 806-742.) That natural frequency is considerably higher than that of the current head (400 Hz). Because the adequacy of the new head has been established by NHTSA testing, and because no information has arisen showing problems with the new head, the agency believes the new dummy head is completely suitable for use in the 3-year-old child dummy.

The NPRM proposed that NHTSA would continue testing add-on restraints with the present dummy head or the new head, at the manufacturer's option, for three years. The NPRM proposed that, after the three year period, NHTSA would test all add-on child restraints with dummies incorporating the new head assembly. The agency explained in the NPRM that it sought to have, eventually, only one head assembly for the three-year-old dummy, to preclude inadvertent use of the current head assembly in a compliance test of a built-in restraint.

Ford requested that the agency permit indefinite use of the present dummy head, rather than limit such use to a three year period. Ford said that there is little risk that the wrong head would be mistakenly used, particularly if the new head is composed of aluminum or magnesium, materials unlike in appearance to the current (urethane) dummy head.

NHTSA disagrees with Ford that the agency's compliance procedures should permit the indefinite use of the present dummy head. Since the new head will be composed from fiberglass (and not the aluminum and magnesium materials Ford suggested) and is outwardly identical to the current head assembly, it is important that the agency reduce the likelihood that the present head could be inadvertently used in a compliance test of a built-in restraint system. Such errors would represent a needless waste of time and resources. With respect to add-on restraints, those that pass a Standard 213 compliance test when tested with a dummy incorporating the existing head should also pass when tested with a dummy using the new head. Thus, there is no apparent advantage to retaining the old head beyond the three year period. Further, test dummy heads, on average, must be replaced after approximately three years due to the wear from testing and the aging of the rubbers and plastics in the head. Thus, the three year transition period before use of the new head assembly is mandated should not impose any burdens on the dummy users. Testing facilities could continue using the current head assemblies during the three year transition period

and could purchase the new head assemblies when the current head assemblies must be replaced.

Ford and GM highlighted sections of the proposed regulatory language where typographical or editorial corrections were appropriate. NHTSA has adopted these suggestions. In addition, Ford asked the agency to make it clear that, during the three year period when optional use of either head is permitted, NHTSA's compliance testing would be conducted using the type of dummy head that the add-on child restraint manufacturer chose to use in certifying its restraint system. NHTSA does not object to using the same type of head, and has revised the text of S7.2 of Standard 213 to specify that the type of head used in compliance tests during the three year period is at the manufacturer's option.

Proposed Specifications for the Accelerometer

All comments relating to the proposed adoption of generic specifications for the accelerometer were supportive of the proposal. Ford suggested minor changes to the regulatory language to clarify specifications or correct typographical errors. The agency agrees with these recommendations, and has adopted the generic specifications proposed in the NPRM, as revised by Ford's suggested changes.

Effective Date

The effective date for making these amendents to the CFR is 30 days from the date of publication.

Beginning 30 days after publication of the final rule, each 3-year-old child test dummy NHTSA uses to test a built-in child restraint will be assembled with the new head assembly specified in § 572.16(a)(1). The higher natural frequency response of the new head assembly will ensure that the head acceleration measurements taken during testing of built-in child restraints are accurate and reliable. Because of the need for accurate and reliable head acceleration measurements, the agency finds that this effective date of less than 180 days is in the public interest.

For add-on restraints, the NPRM proposed that manufacturers would have the option of specifying the use of the current or new head assembly in NHTSA compliance testing, beginning 30 days after publication of the final rule, "until three years after publication of a final rule." Permitting optional use of the proposed head assembly beginning 30 days after publication will not impose any burdens on any party, and will further the public interest by allowing manufacturers to gain experience with the new head assembly. Thus, NHTSA again finds good cause for such an effective date.

Although the NPRM did not identify the exact date three years after publication of a final rule from which use of the present head assembly in NHTSA's compliance tests will cease, such a date must be specified in Standard 213 so that all persons reading the standard can readily know how NHTSA conducts its testing. This final rule specifies this date as September 1, 1993. The agency has determined that this date is appropriate because it is approximately three years after the date of anticipated issuance of this final rule, and consistent with the date the NPRM proposed.

Regulatory Impacts

Executive Order 12291 and the Department's regulatory policies and procedures

NHTSA has considered costs and other factors associated with this final rule and has determined that this rule is neither major under Executive Order 12291, nor significant under the Department of Transportation's regulatory policies and procedures. The agency believes this rule will not result in new costs which a manufacturer would pass on to consumers. The costs of new and old head assemblies and accelerometers are comparable. Further, manufacturers and test facilities periodically must buy new items to replace old ones so that tests may be conducted with properly specified and instrumented dummies. The necessity of switching to the new head will not add to the cost of periodic replacement. The agency concludes therefore that a full regulatory evaluation is not required.

Small Business Impact

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. I certify that this rule will not have a significant economic impact on a substantial number of small entities. There are no small businesses manufacturing test surrogates or accelerometers. Six of the seven manufacturers currently producing child restraints are not small businesses. (Employment data could not be found for the seventh manufacturer.) To have their restraints tested, manufacturers usually contract with a test laboratory. Because the cost to test a restraint system should not change due to this final rule, and because restraints that pass when tested with a dummy incorporating the existing head should pass when tested with a dummy with the new head, there should be no new cost to small businesses. Consequently, there should be no new costs to small governmental jurisdictions or small organizations that may be child restraint systems purchasers.

Environmental effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR parts 571 and 572 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S7.2 of § 571.213 is revised to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S7.2 *Three-year-old dummy.* A three-year-old dummy conforming to subpart C of part 572 of this chapter is used for testing a child restraint that is recommended by its manufacturer in accordance with S5.6 for use by children in a weight range that includes children weighing more than 20 pounds.

(a) *Built-in child restraints.* When a three-year-old test dummy is used for testing a built-in child restraint, the dummy shall be assembled with the head assembly specified in § 572.16(a)(1) of this chapter.

(b) *Add-on child restraints.* (1) Until September 1, 1993, when a three-year-old test dummy is used for testing an add-on child restraint, the dummy shall be assembled using, at the manufacturer's option, either head assembly specified in § 572.16(a) of this chapter.

(2) Effective September 1, 1993, when a three-year-old dummy is used for testing an add-on child restraint, the dummy shall be assembled with the head assembly specified in § 572.16(a)(1) of this chapter.

* * * * *

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for part 572 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

Subpart C—3-Year-Old child

2. Paragraphs (a) and (b) of § 572.16 are revised to read as follows:

§ 572.16 Head.

(a) The head consists of the assembly designated as SA 103C 010 on drawing no. SA 103C 001, and conforms to either—

(1) Each item specified on drawing SA 103C 002(B), sheet 8; or

(2) Each item specified on drawing SA 103C 002, sheet 8.

(b) When the head is impacted by a test probe specified in § 572.21(a)(1) at 7 fps, then the peak resultant acceleration measured at the location of the accelerometer mounted in the headform according to § 572.21(b) is not less than 95g and not more than 118g.

(1) The recorded acceleration-time curve for this test is unimodal at or above the 50g level, and lies at or above that level for intervals:

(i) In the case of the head assembly specified in paragraph (a)(1) of this section, not less than 1.3 milliseconds and not more than 2.0 milliseconds;

(ii) In the case of the head assembly specified in paragraph (a)(2) of this section, not less than 2.0 milliseconds and not more than 3.0 milliseconds.

(2) The lateral acceleration vector does not exceed 7g.

* * * * *

3. Section 5.72.17(a) is revised to read as follows:

§ 572.17 Neck.

(a)(1) The neck for use with the head assembly described in § 572.16(a)(1) consists of the assembly designated as SA 103C 020 on drawing No. SA 103C 001, conforms to each item specified on drawing No. SA 103C 002(B), sheet 9.

(2) The neck for use with the head assembly described in § 572.16(a)(2) consists of the assembly designated as SA 103C 020 on drawing No. SA 103C 001, and conforms to each item specified on drawing No. SA 103C 002, sheet 9.

* * * * *

4. Section 572.21 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 572.21 Test conditions and instrumentation.

(a)(1) The test probe used for head and thoracic impact tests is a cylinder 3 inches in diameter, 13.8 inches long, and weighing 10 lbs., 6 ozs. Its impacting end has a flat right face that is rigid and that has an edge radius of 0.5 inches.

(2) The head and thorax assembly may be instrumented with a Type A or Type C accelerometer.

(i) Type A accelerometer is defined in drawing SA–572 S1.

(ii) Type C accelerometer is defined in drawing SA–572 S2.

(b) *Head Accelerometers.* Install one of the triaxial accelerometers specified in § 572.21(a)(2) on a mounting block located on the horizontal transverse bulkhead as shown in the drawings subreferenced under assembly SA 103C 010 so that the seismic mass centers of each sensing element are positioned as specified in this paragraph, relative to the head accelerometer reference point located at the intersection of a line connecting the longitudinal centerlines of the transfer pins in the side of the dummy head with the midsagittal plane of the dummy head.

(1) The sensing elements of the Type C triaxial accelerometer are aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and coincident with the midsagittal plane, with the seismic mass center located 0.2 inches dorsal to, and 0.1 inches inferior to the head accelerometer reference point.

(ii) Align the second sensitive axis with the horizontal plane, perpendicular to the midsagittal plane, with the seismic mass center located 0.1 inches inferior, 0.4 inches to the right of, and 0.9 inches dorsal to the head accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.1 inches inferior to, 0.6 inches dorsal to, and 0.4 inches to the right of the head accelerometer reference point.

(iv) All seismic mass centers are positioned with ±0.05 inches of the specified locations.

(2) The sensing elements of the Type A triaxial accelerometer are aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and coincident with midsagittal planes, with the seismic mass center located from 0.2 to 0.47 inches dorsal to, from 0.01 inches inferior to 0.21 inches superior, and from 0.0 to 0.17 inches left of the head accelerometer reference point.

(ii) Align the second sensitive axis with the horizontal plane, perpendicular to the midsagittal plane, with the seismic mass center located 0.1 to 0.13 inches inferior to, 0.17 to 0.4 inches to the right of, and 0.47 to 0.9 inches dorsal of the head accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.1 to 0.13 inches inferior to, 0.6 to 0.81 inches dorsal to, and from 0.17 inches left to 0.4 inches right of the head accelerometer reference point.

(c) *Thorax Accelerometers.* Install one of the triaxial accelerometers specified in § 572.21(a)(2) on a mounting plate attached to the vertical transverse bulkhead shown in the drawing subreferenced under assembly No. SA 103C 030 in drawing SA 103C 001, so that the seismic mass centers of each sensing element are positioned as specified in this paragraph, relative to the thorax accelerometer reference point located in the midsagital plane 3 inches above the top surface of the lumbar spine, and 0.3 inches dorsal to the accelerometer mounting plate surface.

(1) The sensing elements of the Type C triaxial accelerometer are aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal planes, with the seismic mass center located 0.2 inches to the left of, 0.1 inches inferior to, and 0.2 inches ventral to the thorax accelerometer reference point.

(ii) Align the second sensitive axis so that it is in the horizontal transverse plane, and perpendicular to the midsagittal plane, with the seismic mass center located 0.2 inches to the right of, 0.1 inches inferior to, and 0.2 inches ventral to the thorax accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.2 inches superior to, 0.5 inches to the right of, and 0.1 inches ventral to the thorax accelerometer reference points.

(iv) All seismic mass centers shall be positioned within ±0.05 inches of the specified locations.

(2) The sensing elements of the Type A triaxial accelerometer are aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal planes, with the seismic mass center located from 0.2 inches left to 0.28 inches right, from 0.5 to 0.15 inches inferior to, and from 0.15 to 0.25 inches ventral of the thorax accelerometer reference point.

(ii) Align the second sensitive axis so that it is in the horizontal transverse plane and perpendicular to the midsagital plane, with the seismic mass center located from 0.06 inches left to 0.2 inches right of, from 0.1 inches inferior to 0.24 inches superior, and 0.15 to 0.25 inches ventral to the thorax accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagital and horizontal planes, with the seismic mass center located 0.15 to 0.25 inches superior to, 0.28 to 0.5 inches to the right of, and from 0.1 inches ventral to 0.19 inches dorsal to the thorax accelerometer reference point.

* * * * *

Issued on: July 20, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90–17419 Filed 7–25–90; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 55, No. 144
Thursday, July 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RAILROAD RETIREMENT BOARD

20 CFR Parts 302 and 348

RIN 3220-AA71

Qualified Employee; Miscellaneous

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations by adding a new part 302 to explain when an employee is qualified for benefits under the Railroad Unemployment Insurance Act (RUIA). This new part is necessary in light of amendments to the RUIA made by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988. In addition, the Board proposes to move the two sections now contained in part 348 to this new part and to remove part 348.

DATES: Comments must be received on or before August 27, 1990.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board pays unemployment and sickness benefits to railroad employees who are not working because of unemployment or sickness, including sickness resulting from injury. Only "qualified employees" may receive benefits. Under section 3 of the RUIA, as amended by section 7202 of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII of Pub. L. 100-647, 102 Stat. 3776), an employee is a "qualified employee" if the Board finds that he or she had the required earnings and service in railroad employment during the base year prior to the beginning of the benefit year. Prior to the amendment, section 3 of the RUIA required base year earnings of at least $1,500.00, not counting earnings in excess of $600.00 in any month during the base year. As amended, section 3 increases the amount of base year earnings needed to qualify for benefits on the basis of railroad employment during 1989 from $1,500.00 to $1,775.00, not counting more than $710.00 per month for any month in 1989. For base year 1990, the amount of earnings needed to qualify for benefits is $1,862.50, not counting more than $745.00 per month for any month in 1990.

In this proposed rule, the Board explains how it will compute the amount of base year earnings that an employee must have in order to be a "qualified employee" (§§ 302.2 through 302.4). Also, this proposed rule defines the terms "base year" and "benefit year"; explains how an employee with at least 10 years of railroad service may be eligible for benefits even though he or she is not a "qualified employee" for the benefit year current at the time of application (§ 302.5); and explains how an employee may establish that he or she had sufficient base year earnings and service to qualify for benefits (§ 302.7).

The two sections presently found in part 348 (Miscellaneous) of this chapter should more appropriately be in this new proposed part. Thus, § 348.14 is now proposed to be moved to § 302.6(b), and § 348.15 is now proposed to be moved to § 302.7(c). Part 348 is proposed to be removed from this chapter.

The Board has determined that this is not a major rule under Executive Order 12291; therefore, no regulatory impact analysis is required. The information collections imposed by this part have been approved by the Office of Management and Budget under control numbers 3220-0025 and 3220-0070.

List of Subjects in 20 CFR Part 302

Railroad employees, Railroad unemployment insurance, Reporting and record keeping requirements.

1. Title 20 Chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 302 to read as follows:

PART 302—QUALIFIED EMPLOYEE

Sec.

§ 302.1 Introduction.

This part sets forth the base year service and compensation required of an employee to qualify for benefits under the Railroad Unemployment Insurance Act with respect to a benefit year. Under the Act, only employees who satisfy the qualifying conditions of section 3 of the Act may be paid benefits. No provision is made for payment of dependents benefits for an employee's spouse or children. A qualified employee who claims benefits must demonstrate that he or she is eligible for benefits in accordance with the other provisions of the Act and this chapter. However, a qualified employee who is disqualified under any of the provisions of section 4 of the Act does not forfeit his or her status as a qualified employee.

§ 302.2 Definitions.

Base year. The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year.

Benefit year. The term "benefit year" means the 12-month period beginning July 1 of any year and ending June 30 of the next year. If a registration period begins in June and ends in July, the benefit year ending date is deemed to be the last day of such registration period. If an employee is eligible for payment of extended benefits, the benefit year ending date for such employee will be June 30, or the last day of his or her extended benefit period, whichever date is later.

Compensation. The term "compensation" means generally any form of earnings or money remuneration earned on the basis of railroad employment during any month, excluding any amount in excess of the monthly compensation base for that month and also excluding payments of the character described in § 302.4 of this part.

Monthly compensation base. The term "monthly compensation base" means the greater of $600, or the amount calculated using the following formula:

$$MCB = 600 \left(1 + \frac{A-37,800}{56,700} \right)$$

For the purposes of this formula, "MCB" is the dollar amount of the monthly compensation base, and "A" is the amount of the Tier I tax base under section 3231(e)(2) of the Internal Revenue Code for the calendar year for which the monthly compensation base is being computed. If the dollar amount computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5. If the dollar amount computed is equidistant between two multiples of $5, it shall be rounded up to the nearest multiple of $5.

§ 302.3 Qualifying conditions.

(a) *Basic requirements.* To qualify for benefits with respect to a benefit year, an employee:

(1) Must have earned compensation in an amount equal to at least 2.5 times the amount of the monthly compensation base during his or her base year; and

(2) If such employee has earned no compensation prior to such base year, he or she must have earned compensation in at least five months during his or her base year.

(b) *Deemed service months disregarded.* For purposes of paragraph (a) of this section, service months deemed under § 210.3 of this chapter shall be disregarded.

§ 302.4 Nonqualifying earnings or payments.

The following types of earnings or payments do not count as compensation for the purpose of determining whether an employee has satisfied the base year qualifying conditions.

(a) Compensation earned as an employee representative, as defined in part 205 of this chapter, or as an employee of a local lodge or division of a railway labor organization;

(b) Tips;

(c) Payments under nongovernmental plans for unemployment, maternity or sickness insurance;

(d) Personal injury settlements or judgments, unless a portion thereof represents pay for time lost;

(e) Wages from employment that is subject to the Federal Unemployment Tax Act;

(f) Earnings from self-employment or investments;

(g) Pay for military service;

(h) Remuneration for service which is performed by a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

(i) Any payment that is not subject to contributions under section 8 of the Railroad Unemployment Insurance Act.

§ 302.5 Accelerated benefit year.

(a) *Eligibility conditions.* An employee who is not a qualified employee with respect to the benefit year in effect at the time of his or her application for benefits may be eligible for an "accelerated" benefit year if he or she meets all of the following conditions.

(1) The employee has 10 or more years of service, as defined in part 210 of this chapter, prior to the beginning of his or her current period of unemployment or sickness;

(2) The employee has satisfied the qualifying conditions as defined in § 302.3 of this part with respect to the next succeeding benefit year;

(3) The employee's current period of unemployment or sickness includes at least 14 consecutive days of unemployment or 14 consecutive days of sickness; and

(4)(i) If the applicant is claiming unemployment benefits, he or she did not voluntarily leave work without good cause or did not voluntarily retire, or

(ii) If the applicant is claiming sickness benefits, he or she has not attained age 65 or has not voluntarily retired.

(b) *Beginning date of benefit year.* An accelerated benefit year begins on the first day of the month during which the employee's period of 14 consecutive days of unemployment or 14 consecutive days of sickness begins. Thus, for example, if an eligible employee has 14 consecutive days of unemployment from May 29–June 11, his or her benefit year beginning date is May 1, that is, he or she does not have to wait until July 1 to begin receiving benefits. If such employee also had a claim for the period May 15 to May 28, such claim may then be compensable or may serve as the waiting period even though the claim did not consist of 14 days of unemployment. His or her benefit year ends June 30 of the following year.

(c) *Effect of attaining age 65.* If a benefit year begins early for the purpose of paying sickness benefits and the employee attains age 65 before July 1 of the general benefit year, sickness benefits may not be paid for any day from the day on which the employee attained age 65 up to the including June 30, but unemployment benefits may be paid in this interim period if the employee is otherwise eligible. Sickness benefits may be paid for days of sickness beginning July 1 or later. If a benefit year begins early for the purpose of paying unemployment benefits, attainment of age 65 will have no effect on the employee's rights to sickness benefits, other than extended sickness benefits, in the accelerated benefit year. An employee is deemed to attain age 65 on the day before his or her sixty-fifth birthday.

§ 302.6 Publication requirements.

(a) *Publication of base year compensation requirement.* On or before December 1 of each year, the Railroad Retirement Board will compute the amount of base year compensation that an employee must have during the following calendar year in order to be a qualified employee on the basis of such compensation. Within 10 days of such computation, the Board will publish a notice in the **Federal Register** of the amount so computed and will notify each employer of that amount. Information as to such qualifying amount may also be obtained from any district or regional office of the Railroad Retirement Board or from the Bureau of Unemployment and Sickness Insurance.

(b) *Notices.* The Board will provide employers with notices of their employees' rights to benefits under the Railroad Unemployment Insurance Act. The Board will arrange with employers to post such notices in such numbers and in such places as may be necessary to insure that they will be seen by the greatest number of employees.

§ 302.7 Establishing base year service and compensation.

(a) *Employer reports.* In determining whether an applicant for benefits is a qualified employee, the Board will rely initially upon reports of base year service and compensation provided by employers in accordance with part 209 of this chapter.

(b) *No employer report located.* If the Board cannot locate the employer's report of base year service and compensation for an applicant, the applicant will be afforded an opportunity, by completing the form prescribed by the Board, to provide such other statement, information, evidence or documentation to establish his or her status as a qualified employee. An

employee's claim for credit for service or compensation that is not shown in the Board's records of service and compensation shall be verified in accordance with §§ 210.7 and 211.14 of this chapter.

(c) *Employer fails to report.* When an employer has failed or refuses to file a report under part 209 of this chapter, an employee may establish his or her base year service and compensation by submitting:

(1) Statements, under oath or otherwise, signed by an official or a duly authorized employee of a Federal or State governmental agency, based upon reports to the agency by the employer; or

(2) Statements, under oath or otherwise, signed by an officer or a duly authorized employee of the employer, or if not so signed, on forms prepared by the employer.

(Approved by the Office of Management and Budget under control numbers 3220–0025 and 3220–0070)

PART 348—MISCELLANEOUS [REMOVED]

2. Part 348, Miscellaneous, is hereby removed and reserved.

Dated: July 20, 1990.

By Authority of the Board

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–17439 Filed 7–25–90; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Transfer of Glutethimide From Schedule III to Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration (DEA) proposes to transfer glutethimide from Schedule III to Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This proposed action is based on data gathered and reviewed by DEA and the evaluation and recommendation of the Assistant Secretary for Health. When finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule II on the manufacture, distribution and possession of the substance, glutethimide.

DATES: Comments must be submitted on or before September 24, 1990.

ADDRESSES: Comments and objections should be submitted to: Acting Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Glutethimide was introduced into medical practice in 1955 as a sedative-hypnotic substitute for the barbiturates. Its early popularity waned in the 1960's when it was recognized that glutethimide offered no therapeutic advantage over other drugs, that overdoses were difficult to treat and that its addiction liability and severity of withdrawal symptoms were equal to those of the barbiturates. As a result, glutethimide was largely replaced by newer, safer drugs. Glutethimide was controlled under the Drug Abuse Control Amendments of 1965 because of its potential for abuse and in 1970 it was incorporated into Schedule III of the CSA. Despite the controls of Schedule III, since the early 1980's, significant diversion and abuse of glutethimide have occurred. At least seven states (California, Connecticut, Delaware, Illinois, New Jersey, New York and Pennsylvania) have transferred glutethimide from Schedule III to Schedule II in order to minimize the diversion and abuse of this substance. While these actions have had some success locally, the national or interstate availability of glutethimide has not been affected and more stringent regulation is necessary at the Federal level.

By letter dated April 12, 1989, the Administrator of the DEA submitted information to the Acting Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, and in accordance with 21 U.S.C. 811(b), requested a scientific and medical evaluation and scheduling recommendation for glutethimide. By letter dated June 22, 1990, the Assistant Secretary for Health provided his evaluation and recommended that glutethimide be controlled in Schedule II.

The following is a summary of the information submitted to the Acting Assistant Secretary for Health. Glutethimide, along with codeine containing products, is commonly encountered on the street as "Fours and Dors," "Pancakes and Syrup" and "Hits." This combination is reported to produce a heroin-type euphoria which lasts approximately six to eight hours. The DEA conducted 66 criminal investigations between January 1986 and December 1987 which involved the documented diversion of over four million dosage units of the drug. During that same period, the Drug Abuse Warning Network (DAWN) provided evidence that significant levels of abuse existed. Medical examiners reported 189 cases and hospitals reported 1,054 emergency room visits related to the abuse of glutethimide. Philadelphia, PA and Newark, NJ were responsible for the largest number of these reports. Since 1983, the abuse of glutethimide has prompted at least six states to place glutethimide under Schedule II controls.

Review of 1988–1990 information indicates that the diversion and abuse of glutethimide continue and Federal action is needed. Placement of glutethimide into Schedule II federally will allow limiting the amount produced to that needed for legitimate medical, scientific and industrial needs, will permit monitoring of the amounts transferred between parties, and will require that only non-refillable prescriptions be written.

The DEA Acting Administrator, based on the information gathered and reviewed by his staff and the recommendation of the Assistant Secretary for Health and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exists to propose that glutethimide be transferred from Schedule III to Schedule II of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule II are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(3) Abuse of the drug or other substance may lead to severe psychological or physical dependence.

Interested persons are invited to submit their comments, objections or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Acting Administrator, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the proposed transfer of glutethimide from Schedule III to Schedule II of the CSA will have no significant economic impact on a substantial number of small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The provisions which accompany the placement of glutethimide into Schedule II are identical to those which apply to any Schedule II substance. Six of the seven companies which manufacture and market pharmaceutical glutethimide products already are registered to handle Schedule II products.

In accordance with the provisions of 21 U.S.C. 811(a), this proposal to transfer glutethimide from Schedule III to Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685), and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of the DEA by Department of Justice Regulations (28 CFR 0.100), the Acting Administrator hereby proposes that Title 21 CFR 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for title 21, CFR part 1308 continued to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.12 is amended to redesignating paragraphs (e)(2) through (e)(4) as (e)(3) through (e)(5) and by adding new paragraph (e)(2) to read as follows:

§ 1308.13 Schedule II.

* * * * *

(e) * * *

(2) Glutethimide.....2550

* * * * *

§ 1308.13 [Amended]

3. Section 1308.13 is amended by removing paragraph (c)(5) and redesignating paragraphs (c)(6) through (c)(12) as (c)(5) through (c)(11).

Dated: July 18, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90-17403 Filed 7-25-90; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3813-4]

Ocean Dumping; Proposed Site Designation in Gulf of Mexico Offshore of Pascagoula, MS

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore of the Port of Pascagoula, Mississippi, as an EPA-approved ocean dumping site for the dumping of suitable dredged material. This action is necessary to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the greater Pascagoula, Mississippi vicinity.

DATES: Comments must be received on or before August 27, 1990.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street SW., Washington, DC 20460.

EPA/Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Kellam, (404) 347-2126.

SUPPLEMENTARY INFORMATION:

Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a site offshore the Port of Pascagoula, Mississippi, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR chapter I, subchapter H, section 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of "Approved Interim and Final Ocean Dumping S tes" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Pascagoula site as an interim site. Interested persons may participate in this proposed rulemaking by submitting written comments on or before August 27, 1990, to the address given above.

EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (see 39 FR 16186 (May 7, 1974)). EPA, in cooperation with the Mobile District of the U.S. Army Corps of Engineers (COE), has prepared a draft EIS entitled "Draft Environmental Impact Statement for Designation and Use of a New Ocean Dredged Material Disposal Site Pascagoula, Mississippi". This proposed rule and the subsequent final rule are procedural follow-ups to the EIS. This proposed rule includes EIS excerpts.

The action discussed in this EIS is the final designation for continuing use and expansion of the expired interim ocean dredged material disposal site near Pascagoula, Mississippi. The purpose of the action is to provide an

environmentally acceptable location for ocean disposal. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

For the Pascagoula ODMDS, the COE and EPA would evaluate all Federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts, 220–229) and the COE regulations (33 CFR 209.120 and 209.145). The COE also issues MPRSA permits to private applicants for the transport of dredged material intended for disposal after compliance with these regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgement, all provisions of MPRSA and the associated implementing regulations have not been met. State permitting would not be needed for this ODMDS since the disposal site is located outside of State of Mississippi waters. Publication data in the **Federal Register** for the Notice of Availability of the draft EIS for public review and comment is July 27, 1990. The public comment period on the draft EIS will close on September 10, 1990.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. The need for ocean disposal is determined on a case-by-case basis as a part of the process of permitting for ocean disposal. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State of Mississippi's (the State) approved coastal management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and has submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the disposal at the proposed site on the State coastal zone. EPA will take the State's comments into account in preparing the final EIS for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on the use of the site, if it is designated.

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) were asked by EPA to concur with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. The U.S. Fish and Wildlife Service was asked for concurrence that species under their jurisdiction will not be affected by the designation. The findings of these agencies will be documented in the final EIS.

EPA will accept comments on the DEIS during the DEIS review period. These comments are to be addressed in the FEIS. Similarly, EPA will accept public comments on the proposed rule during its 30-day review period and will address them in the final rule.

Proposed Site Designation

The proposed site is located south of Pascagoula, Mississippi, approximately 1.5 nautical miles southeast of Horn Island, and occupies an area of about 18.5 square nautical miles (nmi²). Water depths within the area range from 39 to 53 feet, averaging about 46 feet. The coordinates of the Pascagoula site proposed for final designation are as follows:

Boundary coordinates: 30°12'06" N 88°44'30" W, 30°11'42" N 88°33'24" W, 30°08'30" N 88°37'00" W, 30°08'18" N 88°41'54" W.

Center coordinates: 30°10'09" N 88°34'12" W.

Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed site conforms to the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of that proposed in this action.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Applications of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria.

Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast (40 CFR 228.6(a)1). The northern boundary of the proposed ODMDS is approximately two nautical miles south of Horn Island. The area is bounded on the east by the north-south safety fairway, on the south by the east-west safety fairway, and on the west by an imaginary line on the eastern boundary of Dog Keys Pass and is defined by the following coordinates:

Boundary coordinates: 30°12'06" N 88°44'30" W, 30°11'42" N 88°33'24" W, 30°08'30" N 88°37'00" W, 30°08'18" N 88°41'54" W.

Center coordinates: 30°10'09" N 88°34'12" W.

This area represents approximately 18.5 nmi². Water depths range from 39 to 53 feet and average approximately 46 feet. Bottom topography within this site is relatively flat, sloping gently seaward.

Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)2). Many northern Gulf of Mexico fish and shellfish species are estaurine dependent, spending a portion of their life cycle in an estuary such as Mississippi Sound. In general, the species spawn in the water of the Gulf of Mexico and eggs or larvae are carried by the currents into the estuaries through the barrier island passes. After a season or more, the species migrate through the pass into the gulf where spawning occurs. Literature surveys performed during the CE Mississippi Sound and Adjacent Areas Study (USACE 1984) indicate that the Horn Island Pass area is an important migration route as are all the other barrier island passes along the northern gulf coast. The use of the migratory routes is heavier during the spring and early summer months than during late summer and fall/winter. The preferred site is about one and one-half miles from

the shallow vegetated areas on the northern sides of the barrier islands and approximately nine miles from the extensive mainland marshes of the Pascagoula Delta and Point aux Chenes bay area. The preferred site is not known to be located near any major breeding or spawning area.

In addition, a number of commercial, sport and recreational species such as grouper, ling, red snapper are known to utilize natural and artificial reef areas for feeding and refuge areas. In the vicinity of the proposed ODMDS, a number of identified fish havens are located to the east, south of the entrance to Mobile Bay, to the west and to the south.

Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)). The primary coastal amenity is the Gulf Islands National Seashore which includes Petit Bois, Horn, and Ship Islands to the north of the preferred ODMDS. The preferred ODMDS is approximately 1.5 nautical miles south of Horn Island or about 14 nautical miles south of the mainland, and about 24 nautical miles east of the Chandeleur Islands. The gulf beaches of these islands are used for recreational activities such as swimming, fishing, and sun bathing. Further protection is afforded the Gulf Islands National Seashore since the predominant currents shoreward of the preferred site are parallel to the shoreline and any migration of material from the ODMDS would be alongshore rater than in an onshore direction.

Types and Quantities of Dredged Material Proposed To Be Disposed of, and Proposed Methods of Release, Including Packing the Dredged Material, if Any (40 CFR 228.6(a)(4). The designated ODMDS will be used for disposal of new work and maintenance material dredged from the eastern Mississippi Sound area which meets the criteria specified in section 102 of the MPRSA. All material to be placed in the ODMDS would be fine-grained or sand-sized material. Quantities of material to be placed in the ODMDS are given as follows:

New Work

U.S. Navy.....750,000—1,000,000 cubic yards
Federal Navigation Project...11,000,000 cubic yards

Operation and Maintenance

U.S. Navy..... 250,000 cubic yards/18 months
Federal Navigation Project...1,000,000 cubic yards/18 months

The material dredged from the entrance channel meets the exclusion criteria specified in 40 CFR 227.13 b(1), i.e. "* * * dredged material composed predominantly of sand, gravel, rock, or any other naturally occurring bottom material with particle sizes larger than silt, and the material is found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels * * *", therefore no testing of the material was performed. The materials to be dredged from the lower Pascagoula River and Upper Mississippi Sound channels were subjected to biological and chemical testing to determine toxicity and bioaccumulation potential utilizing three representative marine organisms. The toxicity of the six sediment samples tested was minimal.

Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5). The location of the proposed ODMDS present no special problems for surveillance and monitoring. The site is 14 miles south of the mainland. Water depths range from 39 to 53 feet. These water depths are amenable to either surface sampling or diver collection and, under normal circumstances, do not require the use of a large oceanogrpahic vessel. High turbidity may occasionally restrict diver operations and photography but is not expected to be a significant hindrance to surveillance and monitoring. Site surveillance can be accomplished by air from Jackson County Airport in Pascagoula, Mississippi or by water from numerous facilities in Mississippi Sound. A proposed site management and monitoring plan has been developed to determine short- and long-term impacts to the marine ecosystem associated with disposal of dredged material into the ODMDS. This management and monitoring plan is included in the DEIS as an appendix.

Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6)). Data collected within the Gulf of Mexico between November 1980 and September 1981 indicate that the progression of the tide through Horn Island Pass segments the gulf into eastern and western areas, dominating circulation within this portion of the gulf. The eastern area is between Horn Island Pass, Mississippi, and the main pass entering Mobile Bay, Alabama. The western area is between Horn Island Pass and the chandeleur Islands. As the tide propagates from the gulf through Horn Island Pass, a general clockwise movement of water in the eastern area is set in motion, whereas, in the western area, a general counterclockwise movement occurs. In the shallow areas of the gulf, near the barrier islands, the wind and pressure forces tend to dilute the influence of the tide on the general circulation pattern, creating a highly variable pattern. It appears that a two-layer circulation pattern exists between surface and bottom waters when stratification occurs. The stratification decouples the currents throughout the water column causing variable velocities and directions to occur.

The ODMDS's occupy a small area relative to the area of the continental shelf near Pascagoula. Changes in bathymetry are small in relation to the water depths in the sites. Therefore, the discharges of dredged material into either alternative ODMDS would have negligible impact on the circulation and mixing of the shelf waters.

The fine-grained dredged material proposed for discharge onto the ODMDS will be more easily transported than the existing bottom materials; i.e. the finer material can be moved by a lower current. Thus, the clay and silt size particles on the surface of the ODMDS can be expected to be winnowed out by the currents and the site will become armored with sand, shell, and "clay balls". The fine-grained particles should become more difficult to erode over time as the material consolidates

The environmental consequences of the transport of this fine-grained material on the marine ecosystem will vary depending on the proximity of the area in question to the actual disposal location. Impact within the designated ODMDS would range from direct burial of benthic resources and increased suspended solids concentrations in areas adjacent to the disposal location to minimal impacts near the boundaries of the site. Impacts outside the designated ODMDS will be minimal because: (1) The site is being sized to contain the majority of the fine-grained material under normal hydrographic conditions and (2) the location of the site is being chosen to be a sufficient distance from any significant resources. Under abnormal hydrographic conditions, i.e. hurricane conditions, impacts due to the movement of ambient sediment particles would mask any impacts due to movement of fine-grained materials.

Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)7). A portion of the preferred ODMDS has been utilized historically for the placement of dredged material from the eastern Mississippi Sound area. There have been no demonstrable adverse impacts to the marine ecosystem of this area due to this disposal.

Interference With Shipping, Fishing, Recreation, Mineral Extraction,

Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)8). The proposed ODMDS was chosen to minimize interference with the activities listed.

Fish, due to their motile nature, would not be directly affected by the discharge since they can avoid the area. However, some species would be indirectly affected due to the loss of benthic organisms which serve as a food source for these species. These impacts would be localized to the immediate area of the disposal operation and would be temporary in nature. Chemical analyses and bioassays of the dredged material indicate that no significant toxic effects are expected.

There are no known areas of shellfish culture in the vicinity of the proposed site nor are there any known areas of special scientific importance in the vicinity; therefore, no impacts to these resources would result from the proposed action.

Although the possibility of oil and gas leasing operations within the vicinity of the proposed ODMDS is a likelihood, experience suggests that offshore oil and gas operations and dredged material disposal are not mutually exclusive. As the need arises, the management plan for the use of the ODMDS will be revised to include any ongoing or proposed oil and gas leasing activities.

There are no military restricted areas that would be affected by designation and use of the ODMDS.

The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)9). Past surveys and the baseline surveys conducted during the ODMDS siting activities show the water quality and other environmental characteristics of the proposed ODMDS to be typical of the northern Gulf of Mexico where sand or sandy mud sediments predominate. The proposed site does not possess unique characteristics which would preclude designation and use as an ODMDS.

Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6 (a)10). Some change in benthic species composition on the designated ODMDS can be expected due to a difference in grain size from the existing bottom. However, there is no evidence to suggest that benthic species which would develop would be considered nuisance species. Some fecal cliform bacteria may be contained in the dredged material; however, it is improbable that these species would become established due to the existing salinity regime of the area.

Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)11. Review of literature pertaining to the cultural resources of the general area of the proposed ODMDS suggests that there are no natural or cultural features of historical importance within or in the vicinity. Coordination, by letter dated January 25, 1989, with the Mississippi State Historic Preservation Officer indicates that the potential for shipwrecks in open water of these depths is considered extremely low.

Site Management

Site management of the Pascagoula ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

A Site Management and Monitoring Plan has been developed. This plan provides a framework for both side management and for the monitoring of effects of disposal activities. Site management may include locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate. The Site Management and Monitoring Plan may be changed by EPA to account for additional or lesser needs to manage and monitor the site.

Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general criteria used for site evaluation.

The designation of the Pascagoula site as an EPA-approved ODMDS is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the dumping if it determines that environmental concerns under the Act have not been met.

The Pascagoula ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Pascagoula, Mississippi vicinity.

Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis. This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Approved by:

Lee A. Dehihns III,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraph (a)(1)(i)(C) and by removing from paragraph (a)(3) the words and coordinates for "Pascagoula, MS" and

by adding paragraph (b)(87) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(87) Pascagoula, Mississippi; Ocean Dredged Material Disposal Site ___ Region IV.

Location 30°12'06" N 88°44'30" W, 30°11'42" N 88°33'24" W, 30°08'30" N88°37'00" W, 30°08'18" N88°41'54" W.

Center coordinates: 30°10'09" N 88°34'12" W.

Size: 18.5 square nautical miles.

Depth: Average 46 feet, range 38 to 53 feet.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Pascagoula, Mississippi vicinity.

[FR Doc. 90-17379 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-5

Miscellaneous Changes

AGENCY: General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA publshed a proposed rule (December 1, 1989, 54 FR 49777) on prescribing the methods by which the General Services Administration provides for the establishment of centralized services in Federal buildings occupied by a number of executive agencies. GSA adopted recommended changes to provide printing and photocopying services in multi-occupant Federal buildings or complexes, and are offering the resultant second draft for review and comment.

DATES: Comments are due August 27, 1990.

ADDRESSES: Comments should be submitted to the General Services Administration, CAR, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny Young, Reproduction Services Division Director (202-566-1961).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-5

Government property management.

PART 101-5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS

1. The authority citation for part 101-5 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Part 101-5 is retitled to read as follows:

PART 101-5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES

3. Section 101-5.000 is revised to read as follows:

§ 101-5.000 Scope of part.

This part prescribes the methods by which the General Services Administration provides for establishment of centralized services in Federal buildings or complexes occupied by a number of executive agencies.

Subpart 101-5.1—General

4. Section 101-5.101 is revised to read as follows:

§ 101-5.101 Applicability.

The regulations in this part apply to all executive agencies which occupy space in or are prospective occupants of multi-occupant Federal buildings located in the United States. In appropriate circumstances, the centralized services provided pursuant to this part are extended to agencies occupying other Federal buildings in the same geographical area. For purposes of this part, reference to Federal buildings may be deemed to include, when appropriate, leased buildings or specific leased space in a commercial building under the control of GSA.

5. Section 101-5.102 is revised to read as follows:

§ 101-5.102 Definitions.

(a) *Centralized services* means those central supporting and administrative services and facilities provided to occupying agencies in Federal buildings or near by locations in lieu of each agency providing the same services or facilities for its own use. This includes those common administrative services provided by a Cooperative Administrative Support Unit (CASU). It does not include such common buildings features as cafeterias, blind stands, loading platforms, auditoriums, incinerators, or similar facilities. Excluded are interagency fleet management centers established pursuant to Public Law 766, 83d Congress, and covered by part 101-39 of this chapter.

(b) *Occupying agency* means any Federal agency assigned space in a building or complex for which GSA has oversight of, or responsibility for the functions of operation and maintenance in addition to space assignment.

(c) *Cooperative Administrative Support Unit (CASU)* means an organized mechanism for providing administrative services for agencies in multi-tenant federally-occupied buildings.

6. Section 101-5.104-1 is revised to read as follows:

§ 101-5.104-1 General.

GSA is currently providing various centralized services to Federal agencies in such fields as office and storage space, supplies and materials, communications, records management, transportation services, and printing and reprographics. Other centralized CASU's may be providing supporting services or activities such as health units, use of training devices and facilities, pistol ranges, and central facilities for receipt and dispatch of mail. Consolidation and sharing is frequently feasible with resulting economies in personnel, equipment, and space. Opportunities to effect economies through planned consolidation of such services occur particularly during the design stage of the construction of new Federal buildings, or the renovations to existing buildings. Opportunities may also occur as a result of needs assessments jointly conducted by local agencies.

7. Section 101-5.104-2 is amended to revise paragraph (b) as follows:

§ 101-5.104-2 Basis for determining economic feasibility.

* * * * *

(b) In the absence of standard data on which a determination of economic feasibility can be based, or where such data must be supplemented by additional factual information, a formal feasibility study may be made by GSA or a CASU workgroup, in coordination with local agencies to be involved, prior to a final determination to proceed with the furnishing of a centralized service. Generally, a formal feasibility study will be made only if provision of the

proposed centralized service would involve the pooling of staff, equipment, and space which occupying agencies otherwise would be required to use in providing the service for themselves. Examples of centralized services which may require formal studies include printing and duplicating plants and similar facilities.

8. Section 101–5.104–3 is amended to revise paragraph (a) as follows:

§ 101–5.104–3 Data requirements for feasibility studies.

(a) The data requirements for feasibility studies may vary from program to program, but shall be standard within any single program. Such data shall disclose the costs resulting from provisions of the service on a centralized basis as compared to the same service provided separately by each occupying agency, including the costs of personnel assigned to provide the service, comparative space needs, equipment use, and any other pertinent factors.

* * * * *

9. Section 101–5.105 is amended by revising paragraph (a) to read as follows:

§ 101–5.105 Operation of the centralized facility.

(a) GSA will continually appraise the operation of centralized facilities to insure their continued justification in terms of economy and efficiency. Centralized services provided pursuant to the regulation may be discontinued or curtailed if no actual savings or operating improvements are realized after a minimum operating period of one year. Occupying agencies will be consulted regarding the timing of curtailment or discontinuance of any centralized services and the heads of such agencies notified at least 120 days in advance of each action.

* * * * *

10. Section 101–5.106 is amended by revising paragraph (a) and paragraph (b) to read as follows:

§ 101–5.106 Agency committees.

(a) *Establishment.* An occupying agency committee will be established by GSA if one does not exist, to assist it, or such other agency as may be responsible, in the cooperative use of the centralized services, as defined in 101–5.102(a), provided in a Federal building. Generally, such a committee will be established when the problems of administration and coordination necessitate a formal method of consultation and discussion among occupying agencies.

(b) *Membership.* Each occupying agency of a Federal building is entitled to membership on an agency committee. The chairperson of each such committee shall be a GSA employee designated by the appropriate GSA Regional Administrator, except when another agency had been designated to administer the centralized service. In this instance, the chairperson shall be an employee of such other agency as designated by competent authority within that agency.

* * * * *

11. Subpart 101–5.2 is retitled to read as follows:

Subpart 101–5.2—Centralized Field Reproduction Services

12. The Table of Contents for subpart 101–5.2 is amended by revising three entries to read as follows:

Sec.

13. Section 101–5.200 is revised to read as follows:

§ 101–5.200 Scope of subpart.

This subpart states general guidelines and procedures for the establishment and operation of centralized field printing, duplicating, and photocopying services on a reimbursable basis. These services may be provided in multi-occupant leased and/or government-owned buildings.

14. Section 101–5.202 is retitled and amended by revising paragraph (a) to read as follows:

§ 101–5.202 Types of centralized field reproduction services.

(a) Services will include offset reproduction, electronic publishing, photocopying, distribution, bindery services, and other closely related services as requested or required.

* * * * *

15. Section 101–5.203 is retitled to read as follows:

§ 101–5.203 Economic feasibility of centralized field reproduction services.

16. Section 101–5.203–1 is revised to read as follows:

§ 101–5.203–1 Scheduling of feasibility studies.

(a) Based on the available data on the proposed size, location, number of agencies scheduled for occupancy, and other factors pertinent to a proposed new or acquired Federal building, GSA may determine whether to provide for a centralized field reproduction facility in the space directive covering the new building. A feasibility study thereafter will be scheduled and coordinated with the Federal building program of the Public Buildings Service, GSA, and the occupying agencies to occur during the period following development of the prospectus and before development of final working drawings for the space directive. The final decision to provide centralized field reproduction services in a new or acquired Federal building will be subject to subsequent determination by the GSA Administrator based upon results of the formal feasibility study. Agencies wishing not to participate, may do so by requesting an exception from the appropriate GSA Regional Administrator.

(b) Feasibility studies may be initiated by GSA and coordinated with occupying agencies in existing Federal buildings. Such studies will be conducted in accordance with the rules prescribed in § 101–5.203.

17. Section 101–5.203–2 is revised to read as follows:

§ 101–5.203–2 Notification of feasibility studies.

The Administrator, GSA, or his authorized designee, will give at least 30 days notice to the head of each executive agency that would be served by a proposed centralized field reproduction facility in accordance with 101–5.104–4, and will request the designation of agency representatives, as provided in 101–5.104–5.

18. Section 101–5.203–5 is revised to read as follows:

§ 101–5.203–5 Uniform space allowances.

The space requirements for printing, duplicating, photocopying, and related equipment under individual agency use as compared with use in a centralized facility will be based upon uniform space allowances applied equally under both conditions.

19. Section 101–5.203–6 is amended by revising paragraph (a), paragraph (c) and paragraph (d) to read as follows:

§ 101–5.203–6 Pooling of equipment and personnel.

(a) In establishing centralized reproduction facilities in Federal buildings or complexes, GSA's regional office will make arrangements with participating agencies for the transfer of duplicating and related equipment for the centralized plant. Equipment for which there is no foreseeable need in the centralized plant will not be transferred to the plant but will be

disposed of or transferred by the owning agency out of the centralized plant. Copy processing machines, as provided in paragraph (b) of this section, as well as reproduction, addressing, and automatic-copy processing equipment used in bona fide systems applications may be retained by mutual agreement with user agencies.

* * * * *

(c) Personnel devoting over 50 percent of time to the duplicating activities of the affected agency will be identified for transfer to the operating agency upon establishment of a centralized plant, in accordance with the Office of Personnel Management regulations relating to the transfer of functions. Agencies will transfer personnel ceiling to the operating agency for employees so transferred. In the event of later disestablishment of the centralized facility or substantial reduction in operations thereof, personnel ceiling will be returned to the agencies from which originally received.

(d) Exceptions to pooling of equipment to meet the individual agency programmatic need, special physical security needs, confidentiality requirements, and/or certain quality standards will be made available to occupant agencies when use of such equipment is justified. Each agency must provide justification for approval of the GSA regional printing and distribution activity before acquiring space and/or electrical service from the building's manager. Otherwise, as agreed by the user agencies, GSA will not make available space for duplicating equipment, or provide other support services for such equipment in Federal buildings where use of that equipment would duplicate the services provided by the centralized services plant.

20. Section 101–5.203–7 is revised to read as follows:

§ 101–5.203–7 Determination of feasibility.

The Administrator of General Services will determine the economic feasibility of each proposed centralized field reproduction facility in accordance with § 101–5.104–7. The Director of the Office of Management and Budget and the head of each affected agency will be advised of the Administrator's determination to establish a centralized facility.

21. Section 101–5.204 is retitled to read as follows:

§ 101–5.204 Operation of centralized field reproduction facilities.

22. Section 101–5.204–1 is revised to read as follows:

§ 101–5.204–1 Continuity of service.

Each new centralized field reproduction facility will be established in sufficient time to assure occupants moving into the building that there will be no interruption of duplicating services in support of their program activities.

23. Section 101–5.204–2 is revised to read as follows:

§ 101–5.204–2 Announcement of centralized services.

The appropriate GSA regional office will announce the availability of a centralized field reproduction facility approximately 90 days in advance of its activation, including:

(a) The date service will be available;

(b) The services which will be furnished, including technical assistance on reproduction problems;

(c) A current price schedule;

(d) Procedures for obtaining service; and

(e) Billing procedures.

24. Section 101–5.204–3 is revised to read as follows:

§ 101–5.204–3 Appraisal of operations.

(a) The appropriate GSA regional office will appraise continually the operation of each centralized field reproduction facility. Proposals to expand, modify, or discontinue a centralized activity shall be made to the Director, Reproduction Services Division, in the Central Office, and must be supported by all pertinent information.

(b) The Administrator of General Services will give a minimum of 120 days notice to the heads of agencies concerned before any action to curtail or discontinue centralized services is taken.

25. Section 101–5.205–1 is revised to read as follows:

§ 101–5.205–1 General.

The Administrator of General Services, in accordance with § 101–5.105(b), may designate an agency other than GSA to operate a centralized field reproduction facility. Such designation will be made only by mutual agreement with the agency head concerned.

26. Section 101–5.205–2 is revised to read as follows:

§ 101–5.205–2 Prerequisites to designation of other agencies.

The following conditions are to be met by an agency designated by GSA to operate a centralized field reproduction facility:

(a) Generally, prices charged to Government agencies using the centralized field facility should be no higher than those specified on the currently effective nationwide uniform General Services Administration Reproduction Services Price Schedule. In special circumstances, deviations from the Price Schedule may be developed jointly by GSA and the designated agency.

(b) The designated agency shall accept responsibility for implementing the determination of the Administrator of General Services to establish a centralized reproduction facility, issued in accordance with 101–5.104–7 and 101.5.203–7, including the provisions for transfer of excess equipment and other procedures and conditions specified in that determination. Necessary deviations from the determination may be developed jointly by GSA and the designated agency.

27. Section 101–5.205–3 is retitled and amended by revising the introductory paragraph, paragraph (a) and paragraph (c) to read as follows:

§ 101–5.205–3 Actions prior to operation of facilities.

The following actions are to be taken by an agency designated by GSA to operate a centralized field reproduction facility prior to operations of such a facility:

(a) The designated agency shall assist the appropriate GSA regional office in the determination of firm space needs, including any special requirements. Space needs will be furnished by the GSA regional Administration Services Division, Printing and Distribution Branch, before forwarding it to the Public Buildings Service, GSA, for preparation of final working drawings in the Federal building where the plant is to be located.

* * * * *

(c) After coordination with the designated operating agency to obtain its current price schedule, procedures for obtaining service, and billing procedures, GSA will announce the availability of the centralized field reproduction facility in the manner prescribed in § 101–5.204–2.

28. Section 101–5.205–4 is revised to read as follows:

§ 101–5.205–4 Facility inspections and customer evaluations.

Periodic facility inspections and customer evaluations will be performed

jointly by GSA and the designated agency in order to appraise the continuing effectiveness of the centralized facility.

Dated: April 3, 1990.

Carlene Bawden,

Associate Administrator for Administration.

[FR Doc. 90-17443 Filed 7-25-90; 8:45 am]

BILLING CODE 6820-81-M

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41 CFR Part 101-33

Public Utility Rate Cases; Responsibilities for Agencies Delegated Intervention Authority

AGENCY: General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The responsibilities are defined for agencies that receive delegations of authority from GSA to intervene in public utility rate cases. Also, reporting requirements are explained for these agencies. This action is necessary to improve GSA's monitoring and oversight of delegated rate cases. Adherence to these procedures will improve program effectiveness and will result in more timely reporting of rate case results.

DATES: Comments are due (August 27, 1990.

ADDRESSES: Comments should be submitted to the General Services Administration, Office of Procurement, Rate Case Division (PPR) 18th & F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. John Harvey, Director, Rate Case Division at (202) 501-0190 or FTS 241-0190.

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-33

Administrative practice and procedure, Authority delegations (Government agencies), Government procurement, and Utilities.

Accordingly, it is proposed to amend 41 CFR part 101-33, as follows:

PART 101-33—PUBLIC UTILITIES

1. The authority citation for part 101-33 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486 (c).

Subpart 101-33.2—Negotiation and Representation Involving Utility Services

2. Section 101-33.202 is revised to read as follows:

§ 101-33.202 Proceedings before regulatory bodies.

Pursuant to the provisions of section 201(a)(4) of the Property Act, executive agencies shall refer to GSA for consideration, all complaints and petitions involving public utility rates or services proposed to be brought before Federal and State regulatory bodies. Executive agencies seeking intervention authority shall submit their requests to GSA in writing. GSA will determine whether it will handle the proceedings, in cooperation with other interested agencies, or delegate the handling of the proceeding to the referring agencies, depending on which course of action is deemed to be in the best interest of the Government. Agencies delegated intervention authority shall be responsible for representing the interests of all Federal executive agencies in the utility's service jurisdiction, and shall give a diligent effort to identify those interests. To the extent that there is a divergence of interest between the agency receiving the delegation and other agencies served by the utility, the delegated agency shall promptly notify GSA of the situation. After completion of a case, the delegated agency shall provide a report that describes the results of the intervention effort; the report will include a copy of the Public Utility Commission's decision, a summary of the rates requested and approved by the Commission, an estimate of the impact on Federal executive agencies, and a discussion of the central issues of the case. The final report shall be provided to GSA within 90 days of the issuance of the Commission's decision.

Dated: June 28, 1990.

William C. Coleman,

Commissioner, Public Buildings Service.

[FR Doc. 90-17309 Filed 7-25-90; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-336; FCC 90-258]

Table of Assignments for Air Ground Stations in the Public Mobile Service; Columbia, MO et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Proposal to assign air-ground channels for Columbia, Missouri; Wilmington, North Carolina; and Fort Myers, Florida. The intended effect is to meet the needs of the public for air-ground communications in these areas.

DATES: Comments must be filed by September 10, 1990. Reply comments are due by September 25, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Summary of Notice of Proposed Rulemaking

In view of the apparent need for air-ground communications service the Commission proposes to amend 47 CFR 22.521(b) to assign working channel 5 to Columbia, Missouri; working channel 6 to Wilmington, North Carolina; and working channel 10 to Fort Myers, Florida.

Procedures for Amendment of Air-Ground Table of Allotments

The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in § 1.420 of the Commission's rules. The procedures are discussed below.

Cut-of procedures. The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (See § 1.420(d) of the Commission's rules).

(b) Petitions for Rulemaking which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatment will be given so

long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

Dates and service. Under the procedures set out in §§ 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before September 10, 1990 and reply comments on or before September 25, 1990. All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (See § 1.420(a)—(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

Number of copies. Under § 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

Public inspection of filing. All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

List of Subjects in 47 CFR Part 22

Communications common carriers, Table of air ground radiotelephone service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–17394 Filed 7–25–90; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 55, No. 144
Thursday, July 26, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 20, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2119.

Revision

- Foreign Agricultural Service

Readership Survey

Annually
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 340 hours; not applicable under 3504(h)

Geraldine Schumacher (202) 447–7115.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 90–17423 Filed 7–25–90; 8:45 am]

BILLING CODE 3410–01–M

Commodity Credit Corporation

Determinations With Regard to the 1990 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1990-crop provisions for rice.

SUMMARY: The purpose of this notice is to affirm the determinations previously made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended, with respect to the 1990 price support and production adjustment programs for rice.

EFFECTIVE DATE: January 31, 1990.

ADDRESSES: Bruce R. Weber, Director, Commodity Analysis Division (CAD), USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, CAD, USDA–ASCS, Room 3740 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7923. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determinations and the impacts of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs, as found in the catalog of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Rice Production Stabilization	10.065
Loans and Purchases	10.051

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

General Information

On November 1, 1989, (54 FR 46092) a notice of proposed determinations was published which set forth provisions for the 1990 Rice Price Support and Production Adjustment Programs. A total of 378 respondents commented on the 1990 Rice Program. Producers accounted for 336 of the responses received, mills and millers' associations for 20 responses, eight responses were from State producer organizations, one from a foreign government, and one from a U.S. Senator. The balance were from national producer organizations, local ASC committees, and various businesses with agricultural interest.

The following specific comments were received:

(1) *Acreage Reduction Program:* Three hundred and two comments received on the acreage reduction level favored a 25 percent or greater reduction level. Forty-four comments favored an acreage reduction level less than 25 percent, while 14 comments favored an acreage reduction level that would achieve a 30 million hundredweight carryout stock level.

Virtually all comments favoring a 25 percent or higher reduction level are from producers. The most commonly

stated reason for their support of an ARP at such level is that reduced production supports market prices and farm income. Some suggested that federal program outlays are reduced under higher ARP levels. One producer group comment suggested that under a 25 percent ARP the ending stocks objective of 30 million hundredweight would occur.

The 1949 Act provides that the acreage reduction level shall be set to achieve, to the maximum extent practicable, a carryover of 30 million hundredweight. Originally, a 22.5 percent required reduction level was announced on January 3, 1990. However, based upon revised supply and demand estimates, it was decided that a required reduction of 20 percent would more closely achieve this carryout level. Accordingly, on January 31, 1990 the revised 20 percent required reduction level was announced.

(2) *Loan Rate Adjustments:* Thirty-eight comments were received in favor of maintaining the current loan rate differential between classes. One comment received favored the establishment of a flat rate for loan adjustments. The loan rate differential for the 1990 crop of rice is established at the same level as for the 1987 through 1989 crops because this differential level, $1.00 per cwt, has resulted in a relative balance of supply and demand for separate rice classes.

(3) *Loan Deficiency Payment:* Thirty-five comments were received in favor of providing loan deficiency payments to producers. Only one comment was received in opposition to loan deficiency payments. Loan deficiency payments will be offered under the 1990 Rice Program because such payments reduce the administrative costs and workload of providing program benefits.

(4) *Target Price:* One hundred fifty-five comments favoring an increase in the target price were received while one hundred two comments were in favor of maintaining the target price at its 1989 level. Six comments suggested a decrease in the target price and two comments were in favor of a target price set at the statutory minimum. The 1990-crop target price is established at the statutory minimum level of $10.71 because such a level is adequate to insure a very high level of program participation.

(5) *Loan and Purchase Rate:* One hundred seventy-one comments indicated an increase in the loan rate was desirable. Three comments were received favoring no change. The 1990-crop loan and purchase rate is established at the statutory minimum level of $6.50 per cwt. This minimum level was established to increase utilization under the marketing loan program and to minimize Federal outlays.

Determinations

1. *Acreage Reduction/Paid Land Diversion Programs.* In accordance with sections 101A(f)(1)(A) and 101A(f)(4)(A) of the 1949 Act, the acreage reduction program for the 1990 crop of rice is established at 20 percent and land diversion payments shall not be made available. Accordingly, producers will be required to reduce their 1990 acreages of rice for harvest from their rice acreage bases by 20 percent in order to be eligible for price support loans, purchases, and payments.

2. *Established (Target) Price.* In accordance with section 101A(c)(1)(D) of the 1949 Act, the established ("target") price for the 1990 crop of rice shall be $10.71 per hundredweight.

3. *Loan and Purchase Level.* In accordance with section 101A(a) (1) and (2) of the 1949 Act, the price support loan and purchase level for the 1990 crop of rice shall be $6.50 per hundredweight.

4. *Loan Deficiency Payments.* In accordance with section 101A(b)(1) of the 1949 Act, the Secretary will make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payment. Such payments shall be computed by multiplying the loan payment rate by the quantity of rice the producer is eligible to place under loan, but such quantity may not exceed the product obtained by multiplying the individual farm program acreage by the farm program payment yield for the farm.

5. *Inventory Reduction Program.* In accordance with section 101A(g) of the 1949 Act, the Secretary will not make payments available to producers who agree to forgo obtaining a loan or purchase agreement and deficiency and disaster payments and who do not plant rice for harvest in excess of the rice acreage base reduced by one-half of the required reduction percentage.

6. *Marketing Certificate Purchase.* In accordance with section 101A(a)(5)(A) of the 1949 Act, producers will not be required to purchase marketing certificates equal in value to an amount that does not exceed one-half the difference between the amount of the loan obtained by the producer and the amount of the loan repayment.

7. *Loan Rate Differential.* In accordance with section 403 of the 1949 Act, which provides that appropriate adjustments may be made in the support price for any commodity for differences in grade, type, quality, location, and other factors, the loan rate differential shall be $1.00 per hundredweight.

Authority: Secs. 101A and 107E of the Agricultural Act of 1949, as amended, 99 Stat. 1419, as amended, 1448 (7 U.S.C. 1441–1 and 1445e).

Signed at Washington, DC, on July 10, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–17425 Filed 7–25–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Supplement to the Final Environmental Impact Statement for the Nantahala and Pisgah National Forests Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final supplement to the Final Environmental Impact Statement (FEIS) for the Nantahala and Pisgah National Forests Land and Resource Management Plan (Forest Plan) filed in April 1987. The supplement is for a proposed action to consider amending the Forest Plan. This proposed action is likely to result in a significant amendment to the Forest Plan.

The agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal, so those interested and affected may participate in the process and contribute to the final decision.

DATES: Comments related to the issues to be addressed should be received by October 1, 1990, to ensure timely consideration.

ADDRESSES: Send written comments and suggestions to Bjorn Dahl, Forest Supervisor, P.O. Box 2750, Asheville, NC 28802.

FOR FURTHER INFORMATION CONTACT: George H. (Pat) Cook, Planning Staff Officer or Larry Hayden, Interdisciplinary (ID) Team Leader at (704) 257–4200.

SUPPLEMENTARY INFORMATION: The Nantahala and Pisgah National Forests Land and Resource Management Plan (Forest Plan) was approved on April 16, 1987. There were six administrative

appeals of the decision to select Alternative G which became the Forest Plan. One appeal was resolved through negotiation and one other appeal was dismissed. Chief F. Dale Robertson issued his decision on the four remaining Nantahala/Pisgah Forest Plan appeals on September 28, 1989. The Chief's decision affirmed the Forest Plan in part and remanded the Forest Plan in part. As part of the remand, direction was given to conduct additional analysis of alternatives requiring supplemental disclosure in the form of a draft and final supplement to the Final Environmental Impact Statement (FEIS) and a new Record of Decision. The Chief directed that the 1987 Forest Plan remain in effect and continue to be implemented during preparation of the supplement to the FEIS.

Individuals who, in the past, have indicated an interest in the Forest's planning process will be notified about the scope of the proposed action and about the process to identify issues. General notice to the public concerning the scope of the proposed action and the issues identification process will be published in a newsletter and news releases. Public meetings may be held throughout the process of preparing the draft supplement. General notice about the public meetings will be given through letters to interested and affected individuals and/or through news releases.

In preparing the draft supplement to the FEIS, the Forest Service will develop information pertaining to the following:

(1) Additional prescriptions for uneven-aged management will be developed. At least one alternative will substantially rely on uneven-aged management. There may be more alternatives that allow a mixture of silvicultural systems.

(2) Updated information for timber values will be developed and a timber resource land suitability determination will be made pursuant to 36 CFR 219.14. The determination may be different from the amount and location of lands identified for timber production in the 1987 Forest Plan. In correlation with the timber resource land suitability, an allowable sale quantity and base sale schedule will be determined, which may be a significant change from the allowable sale quantity and base sale schedule in the 1987 Forest Plan.

(3) The timber sale program will be reviewed and if the timber sale program is increased above pre-Forest Plan levels, the efforts made to reduce costs and raise revenues will be identified.

(4) The Management Indicator Species (MIS) list will be reviewed for adequacy based on updated information. The list of MIS may be modified. The effects that would result from each alternative in terms of both amount and quantity of habitat and animal population trends for each MIS will be disclosed. The evaluation will include existing and projected amounts of old growth, as well as expected changes of old growth over time.

(5) The existing inventories for plant and animal communities will be reviewed to evaluate diversity in terms of its prior condition.

(6) Information for threatened, endangered and sensitive species will be updated. The Agency will consult with the Fish and Wildlife Service in compliance with section 7 of the Endangered Species Act. Objectives will be established to remove, where possible, species from the listing.

(7) Additional information will be provided on the long-term changes in plant and animal diversity in Wilderness Study Areas.

The draft supplement to the FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1991. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period for the draft supplement to the FEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the National Forests in North Carolina participate at this time. To be most helpful, comments on the draft supplement should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel.*, 803 F.2D 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final supplement. The final supplement is scheduled to be completed by November 1991. The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, Georgia 30367.

Dated: July 20, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90-17458 Filed 7-25-90; 8:45 am]

BILLING CODE 3410-11-M

Draft Supplement to the Environmental Impact Statement for the National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement (DSEIS and SEIS respectively) to the Environmental Impact Statement (EIS) previously prepared for the Wayne National Forest Land and Resource Management Plan (Wayne Plan). The Department of Interior, Bureau of Land Management will assist the Forest Service in this effort as a cooperating agency. The analysis process is expected to result in an amendment to the Wayne Plan. The proposed action is to:

(1) Identify the National Forest System lands which the Forest Service will agree to make administratively available for leasing as per 36 CFR 228.102(c) (this is often referred to as leasing analysis);

(2) Analyze a range of alternatives of lands to make administratively available for leasing for oil and gas;

(3) Describe the environmental effects of actions associated with oil and gas

developments and storage for each alternative developed;

(4) Develop a range of standards and guidelines for oil and gas activities and select the appropriate set for the preferred alternative;

(5) Develop a set of lease notifications and stipulations consistent with the selected standards and guidelines.

The range of possible alternatives will include: (1) The current Plan direction; (2) an alternative with all federal mineral rights unavailable; (3) an alternative with all such rights available except management area 6.2; (4) and one with all such rights available as in the current Plan except subject to stipulations prohibiting surface use for development of federal minerals in management areas 6.2 at Ironton and the south 6.2 at Athens.

The agency gives notice that a full environmental analysis and decision-making process will occur so that interested persons are aware of how they may participate.

The agency will accept written comments and suggestions on the scope of the analysis. Comments directed to the substance, as opposed to the scope, are more appropriately submitted during the comment period following release of the DSEIS. General notice to the public concerning the scope of the analysis will be provided by a newsletter and/or news release.

DATES: Comments related to the scope of the analysis should be received by August 27, 1990 to ensure timely consideration.

ADDRESSES: Submit written comments and suggestions related to the scope of the analysis to Francis J. Voytas, Forest Supervisor, Wayne-Hoosier National Forest, 811 Constitution Ave., Bedford, IN 47421.

FOR FURTHER INFORMATION: Direct questions about the SEIS to Regis Terney, Wayne Oil & Gas Analysis Team Leader, Wayne-Hoosier National Forest, Bedford, IN 47421 (phone 812–275–5987).

SUPPLEMENTARY INFORMATION: The Oil and Gas Regulations (36 CFR Part 228) require a three step decision process in managing the oil and gas resource on National Forest System lands. The three decisions are: leasing analysis, leasing consent, and approval of the Application for a Permit to Drill (APD). Leasing analysis is a decision process to make lands administratively available for leasing. This notice of intent deals only with the leasing analysis. The leasing consent is a site specific decision that permits leasing on specific parcels of land. This includes a determination that operation and development could be allowed. The third step of APD deals with the approval that an operator may drill subject to the surface use plan of operations. Each decision step is subject to environmental analysis and subject to appeal under the administrative appeal procedures.

When the Forest Plan was approved it was believed that oil and gas development activities and effects on the Wayne were insignificant issues due to the limited amount of mineral rights available to be leased by the U.S. Government. Since it was not considered a significant issue the oil and gas development activities and the environmental effects of these activities were not discussed in the detail required by the current oil and gas regulations nor was there a range of alternatives which dealt with oil and gas activities. The range of alternatives is specifically required by 36 CFR 228.102(c) which is the determination of suitability section of the Oil and Gas Resource Regulations published March 21, 1990 as directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

By the year 1995 approximately 71,000 acres of minerals rights will be owned which is about 37 percent of the surface ownership as of December 31, 1989. Of this 71,000 acres only a maximum of 46,000 acres would be available for leasing due to existing leases on 25,000 acres.

The Current Forest Plan direction is as follows: (a) The management areas 8.1, 8.2, 9.2 and the developed portion of management area 7.1 will be considered for leasing but subject to lease stipulations that prohibit surface use for development of federal minerals; (b) all other management areas will be considered for leasing with other special lease terms.

The oil and gas industry has expressed interest in obtaining federal oil and gas leases for available federal minerals on the Wayne National Forest. In accordance with the Federal Onshore Oil and Gas Leasing Reform Act of 1987 the Bureau of Land Management (BLM) has requested the Forest Service (FS) determine which lands are administratively available for a competitive lease sale. After this determination, the Forest Service will then consider identification of specific parcels and consider consent to BLM to offer specific parcels for lease subject to surface use restrictions.

The goal of the supplemental analysis is to describe oil and gas activities, describe the surface disturbances typically associated with oil and gas activities, display a range of alternatives and determine the environmental, social and economic effects that are reasonably foreseeable for each alternative. The BLM will assist the FS by researching and documenting leasing, exploration and production trends, describing the potential for development and describing the nature and scope of the exploration, development, storage activities likely to occur under each alternative analyzed; and identifying the subsurface effects of developing the federal mineral estates. The DSEIS is expected to be filed with the EPA and will be made available for public review in October of 1990. At that time, EPA will publish a notice of availability of the DSEIS in the **Federal Register.**

The comment period on the DSEIS will be 45 days. It is critical that those persons interested in the management of the Wayne National Forest participate at this time. Comments on the DSEIS should be specific, and may address the adequacy of the supplement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). After the comment period ends on the DSEIS, the comments will be analyzed and considered by the agency in preparing the final supplement.

The SEIS is scheduled to be completed and available to the public approximately 4 months following the close of the review period for the DSEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR Part 217.

The Forest Service official responsible for approving the proposed action is Francis J. Voytas, Forest Supervisor, Wayne-Hoosier National Forest, 811 Constitution Ave. Bedford, IN 47421.

Dated: July 19, 1990.

Francis J. Voytas,

Forest Supervisor.

[FR Doc. 90–17434 Filed 7–25–90; 8:45 am]

BILLING CODE 3410–11–M

RIN No. 0596–AA55

Small Business Timber Sale Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice adoption of final policy.

SUMMARY: The Forest Service hereby gives notice of adoption of a final policy modifying administration of the Small Business Timber Sale Set-Aside Program. This policy results from the

proposed modification published December 28, 1989, at 54 FR 53345 and comments received on that proposal. The final policy changes the administration of the set-aside program as follows: (1) The amount of timber set aside when the program is initially triggered is one-half the sum of the small business deficit plus the small business share. Thereafter, the full deficit and share is set aside if the trigger situation continues in subsequent periods; (2) The amount that the small business set-aside share can change at a scheduled recomputation is limited to 10 percentage points when the small business share is 50 percent or less and to 10 percent of the small business share when the share is more than 50 percent. An exception is provided when analysis of individual market areas indicates a greater or lesser change is appropriate; (3) The recomputed share will be implemented without the requirement for at least a 5 point difference before a new share is established; (4) In circumstances where recomputations due to structural change apply, the procedures guiding the agency are strengthened and clarified; and (5) The policy provides for examination of the program in Region 3. Based on that evaluation, set-aside procedures applicable to Region 3 will be modified if appropriate during the 5-year period following the 1991 scheduled recomputation of small business shares. With the exception of the changes adopted in this notice, the remaining features of the current timber sale set-aside program will continue in effect. The intended effect of these changes is to reduce the impact of large and rapid changes in the timber supply available to manufacturers of timber products that are dependent on National Forest timber for a significant portion of their raw material supply.

EFFECTIVE DATE: This policy will become effective September 1, 1990. This date allows adequate time for issuance of instructions to Forest Service personnel through appropriate sections of the Forest Service Manual and the Timber Sale Preparation Handbook.

FOR FURTHER INFORMATION CONTACT: Address questions about this policy to Milo Larson, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 475–3754.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR part 121 and Forest Service policy in chapter 2436 of the Forest Service Manual set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the program is to ensure that small timber businesses have the opportunity to purchase a fair proportion of the sale of timber from the National Forests.

Several terms used in the operation of the program are crucial to understanding the final policy and are described as follows:

1. The *small business share* is an amount of timber equal to a historically established percentage of Forest Service timber computed from timber sold to and harvested by small businesses in a market area.

2. *Deficit* is an amount of timber represented by the difference between the amount of timber calculated to be the small business share in a market area and the amount of timber small businesses have actually purchased over a series of 6-month analysis periods.

3. A *Trigger* occurs when small business is unsuccessful in purchasing the small business share and the accumulated deficit volume become 10 percent or more of the share volume.

Public Comment on the Proposed Policy

In response to the notice published December 28, 1989, the Forest Service received 23 written comments. These came from timber processing firms (16), associations representing the interests of timber oriented firms (3), Forest Service Regions (3), and the Small Business Administration. In general, the comments were far fewer and much less contentious than those received on any past proposal to modify the Timber Sale Set-Aside Program. Ten reviewers supported the change, two appeared to oppose any change, and the remainder commented on specific aspects of the proposal without indication of support or opposition to the proposal as a whole.

1. Amount of Timber Set-Aside

The proposal was to reduce the amount of timber set aside when the program is triggered initially. Instead of setting aside an amount of timber equivalent to the full deficit and a small business share, it was proposed to set aside half the sum of the deficit plus the share when the program triggers initially and the full deficit and share if the trigger situation continues into a subsequent 6-month analysis periods. This received little comment from large businesses. One small business argued that set aside of both the deficit and the small business share is essential to enable them to purchase the small business share and to eliminate the deficit. Another reviewer was concerned that this change would affect the recomputation of shares in succeeding periods.

The effect on future recomputations will be slight since the full share and deficit would be set aside if a substantial deficit persists. This issue was vigorously argued in comments on prior proposals which the agency considered in fashioning its December proposal. In light of the degree of acceptance and analysis of past comment, the proposal is adopted with only minor editorial changes in the text. Therefore, the final policy provides that in an initial trigger situation an amount of timber equivalent to one-half of the sum of the deficit plus the small business share will be set aside. If the trigger situation is not eliminated through normal operation of market forces in the following 6-month analysis period, an amount of timber equivalent to the full deficit plus the small business share will be set-aside until the trigger situation is eliminated.

2. Amount of Change at Scheduled Recomputations

The proposal was to limit the amount of share change that could take place at scheduled recomputations of small business share. The limitations proposed were 10 percentage points if the small business share was 50 percent or less, and 10 percent of the share if the share was more than 50 percent. Little substantiave comment was received on this proposal. Acceptance or endorsement was indicated by several of the respondents.

Minor editorial changes or clarifications were recommended by several reviewers. For example, two large businesses commented on unclear wording regarding situations where limits on share change would not apply in cases where a surplus or deficit carried over from a prior recomputation period. We agree that the wording was unclear and have revised this part of the proposal to remove ambiguity about the effect of carry-over volume.

In the absence of substantive comment, the proposed limits are adopted with editorial changes to improve clarity. The amount that the small business set-aside share could change at a scheduled recomputation is limited to 10 percentage points when the small business market share is 50 percent or less. When the small business share is more than 50 percent, the amount of share change is limited to percentage points equivalent to 10 percent of the existing share. A general exception is provided when there has been surplus or deficit volume carried over from a prior recomputation period.

In addition, a narrow exception to the limit on share change is provided when analysis of individual market areas indicates a greater change may be appropriate. This exception is intended to be used only in limited situations where there are truly strong reasons to exceed the limits. The proposed market area analysis required before allowing such a variance received little comment, but it was noted that short recomputation periods between the end of a structural change and the next scheduled recomputation could warrant a similar procedure. We agree that a market area analysis should be allowed when recomputation periods are less than three years in length since strict adherence to the recomputation procedure could produce unrepresentative results. However, as stated above, this exception is intended to be used only in situations where there are truly strong reasons to exceed the limits.

3. Drop Requirement for Minimum 5 Point Change.

The proposal provided for eliminating the requirement that a recomputed share differ from the former share by 5 points or more before a new share could be established. This received no adverse comment and one favorable comment. Therefore, the adopted policy eliminates the requirement for at least a 5-point difference before a new small business share is established. This change will permit an adjustment in small business share when a small change is indicated by the recomputation.

4. Structural Change.

No substantive change in the structural change recomputations was proposed. However, prior comments from both small and large businesses indicated concern with unclear language in the existing policy which describes procedures for structural change. In response, the December 1989 proposal offered a revision to improve clarity. Comment on this revision was generally supportive of the proposed wording and clarification of procedures. There were several recommendations for substantive changes. However, most of these had already been considered and rejected in analysis of comments on past policy proposals. One new comment suggested that the limits proposed for scheduled recomputations be extended to structural change. The agency rejects that suggestion on the basis that, if major structural change were to occur, the next mix of businesses in the area may be substantially different than before the structural change took place. The limitations, if extended to structural change, would prevent accurate reflections of the needs of remaining industry active in the area.

A reviewer suggested that businesses which operated in more than one market area but that had not purchased more than 10 percent in any one market be included in structural changes. Modification of the threshold for inclusion of firms in a structural change was proposed at 52 FR 36075, September 25, 1987. Based on extensive public comment on that proposal, the agency did not include further changes in the December 1989 proposal, and the suggestion is not included in the adopted policy. It was also suggested that recomputation for structural change be undertaken for anticipated changes in status of timber businesses. The agency rejects this suggestion on the basis that anticipated changes in business status may not actually take place thus causing extra work and inaccurate results. The agency will continue to recognize structural changes only when they actually occur.

One reviewer recommended a provision for exception from structural change recomputation if the change resulted from a large business ceasing operations in a market area and there was a lack of small businesses to make use of the share or possibly for other reasons that may make exceptions desirable. This suggestion was rejected because of the narrow circumstances to which it would apply and because the protection is intended for small businesses as a class should they choose to operate during the recomputation period. Large businesses may purchase set-aside sales if there are no small business bidders. The agency has decided not to adopt the reviewer's suggestion that would allow a limited variance based on market area analysis, but may consider this approach in the future if experience shows it to be a desirable practice.

Another reviewer pointed out that making the recomputation effective immediately following the recomputation period would conflict with the time needed for the decision process for establishing the new share and conflicts with past practice in scheduled recomputations. The agency agrees with this point and is also concerned about the difficulties of rectifying the ongoing program through retroactive adjustments necessitated by an effective date that precedes the decision by several months. The adopted policy makes any recomputed share effective the first 6-month period following the decision establishing the new share. Section 2436.28 has been revised accordingly. Other than noted above, the clarification of procedures for recomputation when a structural change takes place is adopted as presented in the December 1989 proposal with only minor editiorial changes.

5. Special Examination of the Program in Region 3.

A special examination of the program in Region 3 was proposed to see if procedures could be revised to better support communities dependent on Forest Service timber supply and to improve the operation of the program in general. The proposed change was specifically addressed by six reviewers. It was favored by four, opposed by one, and one reviewer opposed any changes resulting from the examination, without unanimous consent by timber businesses in the market areas affected. Several requested that the affected industry be allowed to participate in the process and that the policy specify an opportunity for them to comment on it. The agency agrees. The adopted policy specifies that the minimum participation in the Region 3 examination shall include both a Regional Forester's representative and a Small Business Administration representative and that the affected timber businesses will have the opportunity to comment on the evaluation results prior to a decision to change the program. The adopted policy requires that in Region 3, the program be examined, and if appropriate, be modified during the five-year period following the recomputation scheduled in 1991.

6. Additional Comment

Three reviewers suggested crediting the timber volume for recomputations to the size of the firm where processed and not on the basis of the original purchaser. This has been argued extensively in past proposals. Among the reasons for not adopting this suggestion is the great expense and difficulty of maintaining log accountability for individual sales once the initial delivery has been made.

7. Establishing The New Share

Recent changes in the Forest Service appeal regulations necessitate technical changes in the direction pertaining to decisions establishing new small business shares as a result of recomputations. For example, the new regulations change the start of the time for filing of appeals from the date of the decision to the date of publication of

legal notice of the decision. The adopted policy is not substantially changed, but it is revised to correspond to the most recent appeal regulations and to clarify the effective date of recomputed shares.

Based on the need identified for a change in the small business timber sale set-aside policy and consideration and analysis of the comments received, the Forest Service is adopting, with minor changes, the final policy proposed on December 28, 1989. The new policy will be incorporated in Chapter 2430 of the Forest Service Manual, and chapter 90 of the Sale Preparation Handbook, FSH 2409.18, as direction to Forest Service line officers and timber sale contracting personnel. The text of the revised policy as it will be issued in FSM 2436 is set forth at the end of this notice.

Impacts

This policy change has been reviewed against the objectives and criteria of Executive Order 12291, and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This policy change will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this policy will not have significant economic impact on a substantial number of small entities. The policy will continue to ensure that small business timber industry firms have the opportunity to obtain fair proportion of National Forest timber sales. The policy will require the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This policy is an administrative procedure and, in and of itself, will have no effect on the quality of the human or natural environment. Therefore, analysis of this policy is categorically excluded from documentation in an environmental assessment or an environmental impact statement.

Dated: July 20, 1990.

George M. Leonard,

Associate Chief.

Revised Small Business Timber Sale Set-Aside Program

(Note: Those sections of the Forest Service Manual, chapter 2430 affected by the adopted revision are set forth below. Readers should keep in mind that the policy and procedures are presented as instructions to Forest Service personnel.)

2436.28—Establishing New Small Business Shares. Consult the Small Business Administration Regional Representative and request review of all recomputations as well as any determination of structural change. Following review by the Small Business Administration, the responsible line officer shall: (1) Conduct such analysis and documentation as is necessary to comply with the National Environmental Policy Act (FSH 1909.15, sections 26.2 and 27.1); (2) give notice of the decision establishing the small business share and of any appeal opportunity; and (3) make any new share effective at the beginning of the first 6-month analysis period following the decision to establish it.

A determination as to whether or not structural change has taken place is appealable at the time the determination is made. It may not be appealed at the time the recomputed share is established which is approximately 3 years after the determination is made.

(Note: the remainder of section 2436.28 is not being changed)

2436.34—Examination of the Program in Region 3. The Regional Forester in Region 3 shall undertake an examination of those aspects of the timber sale set-aside program affecting the stability of communities dependent on National Forest timber supply and those that may improve the operation of the program in general. The examination shall be completed in sufficient time to allow implementation of any resultant recommendations during the five year period following the 1991 recomputation.

Based on recommendations that emerge from the Regional examination, the Regional Forester shall formulate changes in procedures needed to implement them. Coordinate proposed changes with each Forest Supervisor in the areas affected. The Regional Forester shall also seek review and comment from the affected timber industry and the Small Business Administration.

The Regional Forester shall apprise the Washington Office Director of Timber Management prior to implementation of changes.

2436.35—Future Share Changes in Regions 1, 2, 3, 4, 5, and 6.

2435.35a—Scheduled Recomputations. Recompute small business shares using the weighted average purchase and harvest history for small business firms in each market area. Use data from the time period between the previous recomputation (regular, structural change or unique circumstances) and the date for the regular recomputation. For purposes of share calculation, base harvest history on timber sale statements of account. Consider volume from tree measurement sales as harvested if it has been charged against advance deposits on the timber sale statement of account.

For nonmanufacturers, use available records of deliveries of sawlog timber from open sales to small or large business firms for processing (FSM 2436.43). Obtain data for this calculation from the annual reports submitted by non-manufacturers for log export control where these records are required. For the last analysis period or any other period where export records are incomplete or missing, use other credible data if it is available. If no data is available for a period, estimate based on local knowledge of the log delivery. Determine the proportion of sawlogs delivered to large and small business, and use the proportions to distribute harvest shown on timber sale statements of account to the appropriate business size class. Credit total harvested sawtimber from set-aside sales purchased by nonmanufacturers to small business.

For manufacturers, do not base harvest history on delivery for processing. Attribute harvest of all sales to the size class of the timber purchaser. Obtain harvest history for small and large manufacturers directly from timber sale statements of account. Base harvest history of sales purchased by manufacturers on total harvested sawtimber volume.

Use the recomputed results to establish the new small business share. However, increases or decreases in market shares shall be limited at each recomputation as follows:

1. If the share is 50 percent or less, changes in share shall be limited to 10 share percentage points.

2. If the share is more than 50 percent, changes in share shall be limited to 10 percent of the current share.

3. The total share shall not be increased to more than 80 percentage points not decreased below one-half the original base share established in 1971 (2436.1).

The limit on share change, (preceding paragraphs 1 or 2) may not apply if the recomputed change exceeds the limit because of timber purchases that extinguished, in whole or in part, a surplus or deficit that was carried over from a prior recomputation period. Set the limit at a level reflecting the share change attributable to the extinguished carry-over volume, if this would be greater than the limit, that otherwise would apply.

In each market area where the recomputed share would result in a share change of more than the limit established in paragraphs 1 or 2, or a recomputation period of less than 3 years, the Forest Supervisor and the Small Business Administration representative shall analyze the structure of the timber industry in the market area and determine the impact of the limits. If, based on this analysis, the Forest Supervisor finds there are strong reasons that the limit should not apply, the Forest Supervisor shall justify an appropriate small business share and propose it to the Regional Forester for approval (FSM 2436.28). In the analysis supporting a proposal for a share above the limits, the Forest Supervisor shall consider the capacity of the firms active in the market area, the available timber supply, the probable effects on communities where manufacturing plants are located, the effects of timber volume carried over from prior periods, and other factors which the Forest Supervisor deems significant.

Calculate surplus or deficit volumes to be carried over from the previous period based on small business harvest performance. Exhibit 1 displays how to use harvest performance, calculated as a ratio of harvest to purchase, to adjust carry-over volumes.

EXHIBIT 1—HANDLING OF CARRY-OVER VOLUMES IN RECOMPUTING SHARES

Small business harvest to purchase ratio of	Effect on share and carry-over volume
A. .90 ratio or more	Drop surplus carry-over. Retain ½ deficit carry-over.
B. Less than .90 ratio	Drop deficit carry-over. Retain ½ surplus carry-over.

2436.35b—Recomputations Due to Structural Change. Recompute shares following structural change. The procedure for recomputation of shares following structural change is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Forest Supervisors may recognize structural change on their own or may act upon recommendation of their subordinate staff when conditions for structural change appear to have occurred. Supervisors shall, in consultation with the Small Business Administration, act upon a request for recomputation due to structural change from any manufacturer or their representative within 60 calendar days of the request. The Supervisor shall make a determination which includes a judgment as to whether the definition for structural change was met. The purpose for making the determination is to enable clear and accurate records of the events at the time they occur rather than to reconstruct them at the time recomputation is due, several years later. If structural change did occur, include the date at which the structural change was judged to have taken place, the time period to be included in the purchase and harvest data for the recomputation, and when the recomputation is expected to become effective if a change in shares should result. Document the results of the determination, make documentation available to interested and affected parties, and if structural change did occur, retain as an open file until the recomputed share is in effect.

Recompute small business shares 3 years after a structural change occurs. Base the recomputation on the purchase and harvest history for the 3-year period, beginning with the first full 6-month period following the structural change. When a recomputation for a structural change would occur within a year of a scheduled recomputation (before or after), skip the scheduled recomputation. Complete the recomputation promptly and establish new shares with an effective date as provided in FSM 2436.28. In the event two or more structural changes occur in the same 6-month period, there will be one recomputation with respect to all structural changes that occurred in the same half year.

Compute small business shares following structural change in the same manner as a scheduled recomputation. Structural change recomputations shall not be subject to the limitations on the amount of share change applicable to scheduled recomputations, but are subject to the lower limit of one-half the base share established in 1971 and the upper limit of 80 percentage points. Adjust carry-over volumes using the small business harvest to purchase ratio in accordance with Exhibit 1, Section 2436.35a.

2436.44—Initiating Required Set Aside Program. The Forest Supervisor shall initiate a set-aside sale program when the accumulated timber volume deficit to date (in any full 6-month analysis period) equals or exceeds 10 percent of the small business share for the previous 6-month analysis period. In this event, a trigger situation exists. Also initiate a set-aside program at the beginning of a 5-year recomputation period when both of the following take place: (1) Triggering of a set-aside program occurred in the last 6-month analysis for the previous 5-year recomputation period and (2) volume deficits sufficient to trigger set-aside were carried forward from the previous recomputation.

When a set-aside program is triggered, always provide at least 20 percent of the volume in a 6-month period as open sales. In Regions 1 through 6, in an initial trigger situation, the Forest Supervisor shall set aside timber volume approximately equal to one-half of the sum of the deficit and the share volume subject to the limitation that 20 percent of the offered volume must be in open sales. An initial trigger situation is any trigger following a period when no volume is set aside. If at the end of that set-aside period, sufficient deficit remains to cause a trigger situation, set aside both the deficit and the small business share volume except for the 20 percent of the volume that must be offered as open sales. Set aside the deficit and share in each successive 6-month period where a trigger situation exists, subject to the 20 percent open volume limitation. Further, during the last year of a recomputation period, set aside both the deficit and the share even in an initial trigger situation, subject to the limitation that 20 percent of volume be offered as open sales.

In Regions 8 and 9, the Forest Supervisor shall set aside both the share and the deficit each time the program is triggered, subject to the 20 percent in open sale volume limitation.

When a set-aside sale program triggers, individual sale volume makeup may make it impractical to set-aside volume exactly equal to the amount of deficit and share calculated for the analysis period. Select set-aside sales that approximate the calculated amount, but the actual set-aside volume may be more or less than indicated by the calculation.

[FR Doc. 90-17473 Filed 7-25-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lost River Watershed, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Supplemental Information Report.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a Supplemental Information Report has been prepared for the Lost River Watershed, Hardy County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304-291-4151. Lost River Watershed, West Virginia, Availability of a Supplemental Information Report.

The project concerns a plan for flood control, recreation, and watershed protection. The planned works of improvement include four single-purpose floodwater retarding dams, one multiple-purpose floodwater retarding and recreation dam, and accelerated technical assistance for land treatment.

The Notice of Availability of a Supplemental Information Report has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the report are available to fill single copy requests at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: July 13, 1990.

Rollin N. Swank,

State Conservationist.

[FR Doc. 90-17495 Filed 7-25-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with sections 353.22(a)(1), (a)(2), and (a)(3) of the Department's regulations, for administrative reviews of various antidumping duty orders and findings.

Initiation of Reviews

In accordance with § 353.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews no later than June 30, 1991.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada	
Oil Country Tubular Goods A-122-506:	
Christianson Pipe Ltd	6/1/89—5/31/90
Prudential Steel	6/1/89—5/31/90
Red Raspberries A-122-401:	
BB Fruit Packing	6/1/89—5/31/90
B.C. Blueberry Co-Op	6/1/89—5/31/90
Berry Best	6/1/89—5/31/90
Clearbrook Packers	6/1/89—5/31/90
East Chilliwack Fruit Growers Co-Op	6/1/89—5/31/90
Jesse Processing, Ltd	6/1/89—5/31/90
Marco Estates/Landgrow	6/1/89—5/31/90
Mukhtiar & Sons Packers	6/1/89—5/31/90
Pacific Coast Fruit Products	6/1/89—5/31/90
Sabolay	6/1/89—5/31/90
Universal Packers, Inc	6/1/89—5/31/90
Valley Berries, Inc	6/1/89—5/31/90
Federal Republic of Germany	
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured A-428-802:	
Volkmann GmbH	2/1/89—5/31/90
France	
Large Power Transformers A-427-030:	
Alsthom-Atlantique	6/1/89—5/31/90
Hungary	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished A-437-601:	
Magyar Gordulocsopagy Muvek (MGM)	6/1/89—5/31/90
Italy	
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured A-475-802:	
Pirelli Trasmissioni Industriali, S.p.A.	2/1/89—5/31/90
Japan	
Large Power Transformers A-588-032:	
Juji Electric	6/1/89—5/31/90
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured A-588-807:	
Nitta Industries	2/1/89—5/31/90
Mitsubishi Belting Limited	2/1/89—5/31/90
NOK Corp.	2/1/89—5/31/90
Bando Chemical Industries, Ltd.	2/1/89—5/31/90
Forklift Trucks A-588-703:	
Toyota Motor Corp	6/1/89—5/31/90
Toyo Umpanki Co., Ltd	6/1/89—5/31/90
PRC	
Tapered Roller Bearings A-570-601:	
Premier Bearing Equipment, Ltd.	6/1/89—5/31/90
China National Machinery & Equipment Import and Export Corporation	6/1/89—5/31/90
Romania	
Tapered Roller Bearings and Parts Thereof A-485-602:	
Tehnoimportexport	6/1/89—5/31/90
Singapore	
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured A-559-802:	
Mitsubishi Belting Limited	2/1/89—5/31/90

Interested parties must submit applications for administrative protective orders in accordance with section 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)).

Dated: July 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-17407 Filed 7-25-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-808]

Postponement of Final Antidumping Duty Determination: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from respondents in the investigation of sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on this request, we are postponing our final determination as to whether imports of MMF sweaters from Taiwan are being, or are likely to be, sold in the United States at less than fair value until not later than August 16, 1990.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clapp or Carole Showers at (202) 377-3965 or 377-3217, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 27, 1990, we published a preliminary determination of sales at less than fair value on MMF sweaters from Taiwan (55 FR 17779). This notice stated that if the investigation proceeded normally, we would make our final determination by July 5, 1990. On May 24, 1990, we published a notice of postponement of the final determination on Taiwan until July 19, 1990. On June 5, 1990, respondents from Taiwan requested a further postponement of the date of the final determination until not later than August 2, 1990. On June 21, we published a notice of postponement of the final determination on Taiwan until August 2, 1990.

On July 17, 1990, respondents from Taiwan requested a further postponement of the date of the final determination until not later than August 16, 1990. These respondents account for a significant proportion of exports of the subject merchandise from Taiwan to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than August 16, 1990, for Taiwan.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: July 18, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17406 Filed 7-25-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90-00011." A summary of the application follows.

Summary of the Application

Applicant: Strand International (SI), 17155 Von Karman Avenue, Suite 105, Irvine, California 92714.

Contact: Edward A. Safar, President, Telephone: (714) 756-2155.

Application No.: 90-00011.

Date Deemed Submitted: July 12, 1990.

Members (in addition to applicant): None.

Export Trade

Products: Medical supplies, including latex examination gloves, and computer software.

Services: Hotel and food/beverage outlet management, hospitality consulting, and hospitality recruiting.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: To engage in Export Trade in the Export Markets, SI seeks to:

1. Enter into exclusive agreements with Suppliers or Export Intermediaries for the export of Products and/or Services to the Export Markets, and

2. Establish the export price of Products and/or Services for sale in the Export Markets.

Dated: July 20, 1990.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 90-17430 Filed 7-25-90; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 900793-0193]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Hawaiian longline fisheries.

SUMMARY: This notice announces that persons entering the Hawaii longline fishery who cannot document either (1) Landing fish in Hawaii caught by longline gear prior to June 21, 1990, or (2) a substantial financial commitment or investment in gear for participation in the longline fishery by his/her vessel located in Hawaii or the Exclusive Economic Zone surrounding Hawaii prior to June 21, 1990, may be determined to be ineligible should the Western Pacific Fishery Management Council (Council) decide in the future to limit effort in the fishery.

This announcement is intended to alert potential participants who do not meet the above criteria that their investment may be at risk should they enter the fishery after June 21, 1990, and the Council decides in the future to limit effort in the fishery at the level existing on the control date. This announcement does not indicate that the Council has current plans to limit effort in the future nor does it prevent any other date for eligibility in the fishery from being proposed and implemented in the future.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 523–1368 or (FTS) 551–1974; or E. Charles Fullerton, Regional Director, Southwest Region, NMFS, (213) 514–6196 or (FTS) 795–6196.

SUPPLEMENTARY INFORMATION: At its 69th meeting, held in Honolulu, Hawaii of June 18–20, 1990, the Council heard concerns from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee that the longline fisheries in Hawaii were growing at a rapid pace, and that the information to adequately assess the impacts of the increased effort on stocks and on the fisheries is lacking. The most dramatic growth has been in the longline swordfish fishery, which has grown from a largely incidental fishery, to landings of 500,000 pounds in 1989, and then to approximately 2.5 million pounds harvested in the first five months of 1990. The longline fleet, of which about a third of the vessels currently target swordfish, has more than doubled in less than two years, expanding from a fleet of about 50 vessels in 1988 to between 100 and 120 vessels currently.

Based on these and other fishery interaction concerns, the Council took several actions to improve the information on which to base its management decisions. It requested that NMFS implement, through emergency action, a federal longline permit system and a federal daily logbook requirement. No action has been taken by NOAA on these requests.

While the Council did not believe that a moratorium or other effort limitation measures were necessary at this time, the control date was established to provide a warning to new entrants the effort could be restricted in the future, and that the Council could use the June 21, 1990, control date to restrict that effort. The intended effect of this announcement is to discourage new entry into the fishery based on speculation while discussions continue on whether and how access to the Hawaiian longline fisheries should be controlled. Establishment of the June 21 control date does not commit the Council or the Secretary to any particular management regime or criteria for limiting effort in the longline fisheries. After more information is available on the status of the stocks and the effort levels necessary to exploit those stocks optimally, the Council may choose a different control date, or its may choose a management regime that does not make use of such a date. The Council may choose to give variable weighted consideration to fishermen in the fishery before and after the control date. The Council also may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–17477 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a joint meeting of the Surf Clam and Ocean Quahog, and the Scientific and Statistical Committees on August 13, 1990, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10 a.m., and adjourn approximately at 3 p.m. The Committees will discuss recommendations for 1991 quotas for surf clams.

For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: July 20, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–17480 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Continuation of Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Due to many time-consuming items on their meeting agenda, the North Pacific Fishery Management Council recessed its 92nd Plenary Session on June 30, 1990, in Anchorage, Alaska, and will reconvene in Juneau, Alaska, on August 7, 1990. Subjects left on the agenda included: (1) Revisions to domestic observer program for 1991; (2) Sablefish fixed gear management—final consideration of IFQs; (3) Proposed moratorium and limited entry schedules for other fisheries; (4) Status report on analysis of inshore-offshore allocation proposal; (5) Salmon plan amendment for overfishing definition; (6) Crab plan amendment for overfishing definition; (7) Halibut/crab bycatch limits in the Bering Sea and Aleutians for 1991; (8) Proposal for groundfish allocation to the Pribilofs; Council role in vessel safety; and (9) Management of U.S. fisheries outside 200 miles in the Central Bering Sea.

The meeting will begin at 8 a.m. on August 7 in Room 117 of the Federal Building, 709 W. 9th Street, in Juneau, Alaska, and continue through August 9. The meeting is open to the public; however, since public testimony was taken on all agenda items in the earlier session, no further public testimony will be taken at this meeting.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–2809.

Dated: July 20, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–17481 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Fishery Planning Committee (FPC) will meet at 9 a.m. on August 24, 1990 in room 2079, Building 4, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA.

The Committee will review a discusson paper examining suggested parameters for a moratorium, a status report on the inshore/offshore analysis, and receive a presentation on the methodology, scope, and intent of the social impact portion of the analysis.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–2809.

Dated: July 20, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–17482 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Adminstration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee (AHBC) has scheduled two meetings: August 6, 1990 at 10:30 a.m., room 373 in the Federal Building, 709 W. 9th Street, Juneau, Alaska; and on September 6, and possibly September 7, at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, room 2039 at 9 a.m. The meeting agendas for both meetings will include preparation of recommendations to the Council concerning development of comprehensive bycatch measures in the groundfish fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands.

The North Pacific Fishery Management Council's Plan Teams for the Gulf of Alaska and the Bering Sea/Aleutian Islands groundfish fisheries will meet Sepetmber 4–7 at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, rooms 2079 and 2143, Seattle, WA. The meeting will begin at 9 a.m. The agenda will include: (1) Preparation of draft Stock Assessment and Fishery Evaluation (SAFE) documents and initial recommendations for acceptable biological catch levels for 1991 fisheries; and (2) review and prioritization of groundfish FMP amendment proposals for the 1991 cycle.

The North Pacific Fishery Management Council's Plan Amendment Advisory Group (PAAG) will meet September 10 at the National Marine Fisheries Services (NMFS) Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA at 9 a.m. The meeting agenda will include review and prioritization of groundfish FMP amendment proposals for the 1991 cycle.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: July 20, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 90–17483 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Folsom Children's Zoo (P82A)

On May 31, 1990, notice was published in the **Federal Register** (55 FR 22057) that an application had been filed by Folsom Children's Zoo and Botanical Gardens, 2800 A Street, Lincoln, NE 68502, to obtain three (3) captive born or beached/stranded harbor seals (*Phoca vitulina*) for public display purposes.

Notice is hereby given that on July 19, 1990, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361–1407), the National Marine Fisheries Service (NMFS) issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policies of the MMPA. The NMFS has determined that Folsom Children's Zoo and Botanical Gardens offers an acceptable program for education or conservation purposes. The Zoo facilities are open to the public on a regularly scheduled basis and access is not limited or restricted other than by an admission fee.

The Permit and supporting documentation are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, MD 20910 (tel: 301/427–2289); and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: July 19, 1990.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 90–17422 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Informaion Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7–401,412, a division of U.S. Patent Application Serial Number 7–236–225, to Hafslund Nycomed AS, having a place of business at Oslo, Norway. The patent rights in this invention have been assigned to the United States of America. To generate interest in a license, an abstract of the invention was mailed to 29 U.S. corporations who had expressed interest in this area of technology. No interest was expressed by the recipients.

The Institute of Neurology at NIH is entering into a Cooperative Research and Development Agreement with Hafslund Nycomed As of Oslo Norway, to develop products embodying the subject patent application. All research work will be performed at NIH and Nycomed intends to manufacture in the U.S., products to be sold in the U.S.

The prospective exlusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days form the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention provides an improved anti-cancer therapy utilizing conjugates containing a diphtheria toxin attached to a moiety which binds to transferrin receptors. The method is particularly efficacious against several malignancies including leptomeningeal carcinomatosis, leptomeningeal leukemia, and CSF-borne tumors. The compositions and methods taught

provide means of treating both primary and metastatic lesions of the central nervous system.

The availability of the invention for licensing was published in the **Federal Register** Vol. 54, No. 242, p. 51925 (December 19, 1989). The availability of the parent patent application for licensing also was published in the **Federal Register**, Vol. 54, No. 142, p. 31066 (July 29, 1989). A copy of the instant patent application may be purchased form the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Stephen Gates,

Associate Director, CUFT, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–17454 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

July 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Government of the United States and Thailand is being amended to include the coverage of certain part categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 47 FR 46732, published on October 20, 1982; and 53 FR 52464, published on December 28, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 20, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you October 14, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Thailand, for which the Government of Thailand has not issued an appropriate visa.

Effective on August 1, 1990, you are directed to require export visas for cotton and man-made fiber textile products in the following part-categories, produced or manufactured in Thailand and exported from Thailand on and after August 1, 1990:

Part-Category	HTS Numbers
300–W (singles and multiples of 85% or more cotton carded yarn).	Only HTS numbers 5205.11.1000, 5205.11.2000, 5205.12.1000, 5205.12.2000, 5205.13.1000, 5205.13.2000, 5205.14.1000, 5205.14.2000, 5205.15.1000, 5205.15.2000, 5205.31.0000, 5205.32.0000, 5205.33.0000, 5205.34.0000 and 5205.35.0000.
300–O (other)	All remaining HTS numbers in Category 300.
604–P (single spun polyester yarn).	Only HTS number 5509.21.0000.
604–O (other)	All HTS numbers in Category 604 except 5509.32.0000 (Category 604–A) and 5509.21.0000 (Category 604–P).

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–17408 Filed 7–25–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Storm Damage Reduction Project for Myrtle Beach and Vicinity in Horry and Georgetown Counties, SC

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The recommended plan will provide for an estimated 4,957,000 cubic yards of sand to be placed along the beach for a total project reach of 22.6 miles. This action is necessary to reduce storm damage to North Myrtle Beach, Myrtle Beach, and Garden City/Surfside Beach. The action is intended to provide a berm to elevation 9.0 feet (NGVD) with a top width of 15 feet and a beach slope of 20 H to 1 V. Sand borrow sites have not yet been identified.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Hauser, Planning Branch, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, South Carolina (803) 724–1136. Questions concerning the DEIS can be directed to Mr. Jim Woody (803/724–4264), Environmental Resources Section, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, South Carolina 29402–0919.

SUPPLEMENTARY INFORMATION: The total project has been divided into three major project reaches as follows:

North Myrtle Beach (Reach 1)—Construction of 8.1 mile reach of beach beginning at Hog Inlet and extending downcoast to the vicinity of S. 48th Avenue. The selected plan would consist of an initial berm constructed to an elevation of 9.0 feet NGVD (top width of 15 feet). Initial construction would consist of the placement of 1,776,000 cubic yards of sand including an estimated 342,000 cubic yards for advance maintenance. Borrow sites have not yet been selected. Periodic renourishment of almost 395,000 cubic yards would also be required at eight year intervals.

Myrtle Beach (Reach 2)—The selected plan for Myrtle Beach consists of the placement of sand on an 8.8 mile reach of beach beginning in the vicinity of 82nd Avenue, N and extending downcoast to the vicinity of 29th Avenue, S. The plan calls for construction of a berm to elevation 9.0 feet (NGVD) (top width=15 feet) and a beach slope of 20H to 1V. Initial construction would consist of the placement of 1,931,000 cubic yards of sand including an estimated 372,000 cubic yards for advanced maintenance. Borrow sites have not yet been selected. Periodic renourishment of about 430,000 cubic yards would also be required at eight year intervals.

Garden City/Surfside Beach (Reach 3)—The selected plan for the Garden City/Surfside Beach area consists of placing sand over a 5.7 mile reach of beach beginning at the northern city limits of Surfside Beach and extending downcoast to a point approximately 1.2 miles south of the Georgetown/Horry County line. The plan calls for construction of a berm to elevation 9.0 feet (NGVD) (top width=15 feet) and a beach slope of 20H to 1V. Initial construction would consist of the placement of 1,250,000 cubic yards of sand including an estimated 240,000 cubic yards for advance maintenance. Borrow sites have not yet been identified. Periodic renourishment of about 280,000 cubic yards would also be required at eight year intervals.

In addition to the proposed action, the following alternatives have been identified:

Nonstructural Alternatives (NS)	Structural Alternatives (S)
No action	Beach revetment.
Rezoning of beach area	Beach fill with periodic nourishment.
Modification of building codes.	Beach fill with periodic nourishment stabilized by offshore breakwaters/perched beach.
Construction setback line	Do.
Moratorium on construction.	Do.
Flood insurance	Beach fill with periodic nourishment stabilized by groins.
Evacuation planning	Do.
Establish a no-growth program.	Seawalls.
Relocation of structures	Stabilization of beaches and dunes by vegetation.
Flood proofing of structures.	Hurricane protection dune.
Condemnation of land and structures.	Removal or modification of detrimenta structures.
Various combinations of above—	Offshore and sources.
	Inland sand sources.
	Various combinations of the above.

None of these alternatives nor a combination of these alternatives except for the recommended plan could meet the established local and Federal planning objectives.

It is not anticipated that a scoping meeting will be held for the preparation of this DEIS due to extensive prior coordination which identified the significant issues involving Federal, state, and local agencies, interested citizens groups and individual citizens. Significant issues to be analyzed in this DEIS involves Environmental impacts to the beach nourishment and borrow areas. Any group, agency or individual wishing to participate in identifying additional issues etc., are invited to do so.

It is anticipated that all work on this DEIS will be completed by the Army Corps of Engineers without assistance from cooperating agencies.

Preparation of the DEIS will be in accordance with the requirements set forth in the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations and applicable Corps of Engineers regulations and guidance.

We estimate that the DEIS will be available to the public July 1992.

Dated: July 11, 1990.

James T. Scott,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 90–17402 Filed 7–25–90; 8:45 am]

BILLING CODE 3710–CH–M

Department of the Navy

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is given that the Naval Research Advisory Committee Project Oxbow Follow-on Panel on Tactical Defense Suppression in the Year 2000 will meet on August 16, 1990, at the Naval Weapons Center, China Lake, California. Sessions of the meeting will commence at 10 a.m. and terminate at 4 p.m. All sessions of the meeting will be closed to the public. The purpose of the meeting is to review and participate in Project Oxbow, which are simulated wargames comparing various tactical defense suppression systems. The agenda will be comprised of briefings concerning an introduction, planned approach and overall project objectives, and an executive session focused on analysis which emphasizes qualitative results in a tactical and operational context, and will include discussions on current and projected capabilities and requirements related to tactical defense suppression systems. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4403.

Dated: July 20, 1990.

Jane M. Virga,

LT, JAGC, USNR, Alternate Federal Register, Liaison Officer.

[FR Doc. 90–17455 Filed 7–25–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources. Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 27, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos,

Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: July 20, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Application for Educational Research Program—Field Initiated.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small Businesses or organizations.
Reporting Burden:
Responses: 350.
Burden Hours: 3850.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by institutions of higher education to apply for funding under the Educational Research Grant Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Prospects: The National Longitudinal Study of Chapter I Children.
Frequency: One-time.
Affected Public: State of local governments
Reporting Burden:
Responses: 160.
Burden Hours: 388.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used to obtain data in support of the sampling plan and sample selection for use in a longitudinal study of chapter I programs. The Department will use this information to report to Congress.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Innovative Projects for Student Community Service.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 150.
Burden Hours: 2400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be by State agencies to apply for funding under the Student Community Service program. The Department uses the information to make grant awards.

[FR Doc. 90–17414 Filed 7–25–90; 8:45 am]
BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Office of Information, Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 30, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: July 20, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Planning, Budget and Evaluation

Type of Review: Expedited.
Title: Observations of Preschool Education for Disadvantaged Children.
Abstract: This form will be used to gather data on preschool programs in five geographic areas. The Department will use this information to select a smaple of preschool programs serving disadvantaged children to be further studied.
Additional Information: An expedited review is being requested in order to gather data by early fall, so that a sample can be developed for further the study in the next school year.

Frequency: One-time.
Affected Public: Non-profit institutions; small business or organization.
Reporting Burden:
Responses: 2500.
Burden Hours: 417.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000-01-M

OBSERVATIONAL STUDY OF PRESCHOOL EDUCATION FOR DISADVANTAGED CHILDREN

Screening Questions

S1. Is your organization currently operating an early childhood program, for example, a day-care center, a preschool or nursery school, a Montessori or other type of child development program?

YES (GO TO S2)..... 01
NO (GO TO S3)..... 02
NO LONGER OPERATING (GO TO S3)..... 97

S2. Does your program serve four-year-old children?

YES (GO TO S4)..... 01
NO (GO TO S3)..... 02

S3. Thank you for your cooperation. The rest of my questions are for organizations that are currently operating early childhood programs and that serve four-year-old children.

S4. How many children are enrolled in the program?

_____
# of children

S4a. How many of these are four-year-olds?

_____
# of four-year-olds

S5. Do you participate in the Child Care Food Program?

YES (GO TO S6)..... 01
NO (GO TO END)..... 02

S6. How many of the children enrolled have been approved for free meals?

_____
# of children

S6a. How many of the children enrolled have been approved for reduced-price meals?

_____
# of children

END. Thank you. I have no more questions.

[FR Doc. 90-17413 Filed 7-25-90; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Research and Development on Hybrid Separation Systems To Separate Propane from Propylene; Program Interest

AGENCY: U.S. Department of Energy.

ACTION: Notice of Program Interest; Research and development on hybrid separation systems to separate propane from propylene.

SUMMARY: "Separate Propane From Propylene." The Office of Industrial Technology of the Department of Energy (DOE) is interested in receiving unsolicited applications for research and development on innovative hybrid systems to perform propane/propylene separation. Research and development continuing through field testing of prototype systems is desired. Currently the separation is carried out by distillation. This distillation is, however, expensive and energy intensive because of the low relative volatility of these two compounds.

SUPPLEMENTARY INFORMATION: Over 17 billion pounds of propylene are produced annually in the U.S., representing the second largest production of the organic chemicals. A total of 25 trillion BTU/year are expended on this difficult separation of propane from propylene. Hybrid separation systems can combine innovative with conventional separation technology. Membrane systems, for example, used with other separation processes, may improve operating paremeters. A theoretical case study has been made for a hybrid/membrane distillation system to perform the energy intensive propane/propylene separation and is available upon requests. The case study provides one possible approach to an innovative hybrid system. Other approaches to hybrid systems will also be considered. Adsorption/distillation and absorption/distillation are other possibilities. The goal of this Notice of Program Interest is the development of new hybrid technologies to signficantly improve the energy efficiency of propane/propylene separation.

The proposed research should address the following areas: (1) Retrofit potential and generic applicability of the systems to other separations; (2) Overall system design and optimization to combine the proposed hybrid technology with a conventional separation process; and (3) Economic, energy use, and market studies to predict the commercial potential of the proposed system. Applications must contain the following information: (1) Description of the proposed research; (2) a critical review of existing and emerging technologies on a world-wide basis that may compete with the proposed technology. The review should conclude that the proposed research is timely, does not duplicate work being pursued elsewhere, and is more competitive than existing or emerging technology; (3) an economic evaluation for industrial implementation indicating the potential for improved productivity and energy efficiency. The economic valuation should also contain evidence and a schedule showing that the proposed technology has potential for commercialization; (4) an estimate of the potential energy savings attributable to the commercialization of the proposed technology; (5) a Statement of Work and Management Plan including a project schedule, work breakdown structure, budget plan, milestones, and decision points; (6) applicants or other participant cost sharing commitments and a description of the form of cost sharing (e.g., cash, in kind); (7) an estimate of the total research and development cost required to reach the stage of technology development at which government funding will no longer be required; (8) the qualifications and capability of the applicants organizations and individuals responsible for performing the work; (9) evidence of interest in the proposed research by industry; and (10) Standard Forms 424, 424A, 424B, DOE Form 1600.5 "Assurance of Compliance," Drug Free and Lobbying certifications executed prior to any award. Additional information may be requested by DOE during the review of applications.

Applications will be evaluated individually as they are received. DOE will evaluate the applications based on the following factors: (1) Overall merit; for example: (a) The concept's applicability and commercial potential to the U.S. petrochemical industry, (b) the interest of industry as evidenced by letters of support, (c) the proposed cost share; (2) the proposed project objectives and the probability of achieving the stated objectives; for example: the proposed project structure as shown in the Statement of Work and Management Plan; (3) the applicants research capabilities and qualifications; and (4) the applicants facilities. DOE will select only proposals which are meritorious based upon the above evaluation and which represent a unique or innovative idea, method, or approach.

A physically separate application for each area of research proposed is required. However, two or more areas of research may be combined if strong interfaces or interrelationships can be clearly shown. Original and two copies of each application should be submitted to: Contracting Officer, U.S. Department of Energy, Idaho Operations Office, Financial Assistance Branch, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Ginger Sandwina. Interested parties may obtain the required unsolicited proposal application package by submitting a written request to the above address. This notice infers no commitment by DOE to make an award. A decision to award will be determined after thorough evaluation of applications received and the availability of funds. DOE reserves the right to support or not support any or all applications.

DOE assumes no responsibility for any cost associated with the preparation of applications. This notice is effective until October 30, 1990, applications may be submitted before this notice expires.

FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Operations Office, Contract Management Division, Financial Assistance Branch, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued in Idaho Falls, Idaho on July 6, 1990.

R. Jeffery Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-17492 Filed 7-25-90; 8:45 am]

BILLING CODE 6450-01-M

Criticality Safety at the Department of Energy's Rocky Flats Plant, Colorado; Response to Recommendation 90-6 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d) the Department of Energy (DOE) hereby publishes notice of the response of the Secretary of Energy (Secretary) to Recommendation 90-6 of the defense Nuclear Facilities Safety Board, 55 FR 23584 (June 11, 1990), concerning Criticality Safety at the Department of Energy's Rocky Flats Plant, Colorado. DOE hereby requests public comments on the response of the Secretary to Recommendation 90-6.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before August 27, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E

Street NW., suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven M. Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 23, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

Dear Chairman Conway: In response to your letter of June 5, 1990, I accept your recommendation 90–6 regarding criticality safety at the Rocky Flats Plant. The Board requested that the Department prepare a written program to address accumulation of materials in the ventilation ducts and related systems at the Rocky Flats Plant.

I have established the following policy on this issue:

1. All lines of ductwork containing more than 400 grams of plutonium shall be cleaned to remove the material to the maximum extent practicable but in no case to leave a residue exceeding 400 grams in any one system of ducts. This will physically rule out the possibility of a criticality in even the most unlikely series of events.

2. The contractor shall develop and implement an Operational Safety Requirement (OSR) which includes a limiting condition for operation, a corresponding surveillance requirement, and a remedial action directive to assure that future operations do not lead to the accumulation of more than 400 grams of plutonium in any one system of ducts. The OSR must be submitted to and approved by DOE prior to resumption of operations.

3. If the contractor determines that the risks to workers during removal of material from ductwork exceeds the risks of continued operation with the material in the duct, the contractor must submit an analysis of the respective risks along with a justification for continued operation of the process lines contributing material to the affected ductwork. If it is not possible to remove the material for other valid reasons, the contactor shall also submit an analysis justifying continued operation of the affected process line. The Secretary shall determine, on a case-by-case basis, if continued operation is warranted.

The Department has directed EG&G Rocky Flats to prepare an action plan to implement the above policy. Implementation must ensure that the possibility of a criticality event is controlled in accordance with DOE requirements and that the presence of fissile and other materials will not result in undue risk to the health and safety of the public or site personnel. The Department has further directed that this action plan respond to the specific points contained in your letter. EG&G expects the plan to be available on or about September 1, 1990, and I will provide a copy to you when it is received.

Sincerely

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 90–17572 Filed 7–24–90; 1:17 pm]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–41–000, et al.]

Iowa Southern Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Iowa Southern Utilities Co.

[Docket No. ER90–41–000]

July 18, 1990.

Take notice that Iowa Southern Utilities Company (ISU) on July 9, 1990, tendered for filing an amendment to its October 30, 1989 filing in this docket. The amendment provides additional information relating to and justification for rates and other conditions of the Energy Agreement between ISU and Iowa Electric Light and Power Company (IELP).

Copies of the filing were served upon IELP and upon the Iowa State Utilities Board.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket No. ER89–612–003]

July 18, 1990.

Take notice that on July 11, 1990, New England Power Company tendered for filing its Compliance Refund Report pursuant to the Commission's order issued April 25, 1990.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Co.

[Docket No. EL89–48–002]

July 18, 1990.

Take notice that on July 6, 1990, Wisconsin Power and Light Company tendered for filing its Refund Compliance Report pursuant to the Commission's order issued May 25, 1990.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Terra Comfort Corp.

[Docket No. ER90–40–000]

July 18, 1990.

Take notice that Terra Comfort Corporation (TC) on July 9, 1990, tendered for filing an amendment to its October 30, 1989 filing in this docket. The amendment provides additional information relating to and justification for rates and other conditions of the Capacity and Energy Agreement between TC and Iowa Electric Light and Power Company (IELP).

Copies of the filing were served upon IELP and upon the Iowa State Utilities Board.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Billings Generation Inc.

[Docket No. QF90–178–000]

July 18, 1990.

On July 5, 1990, Billings Generation, Inc. (Applicant), of 1087 West River Street, Suite 230, Boise, Idaho 83702, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Billings, Montana. The facility will consist of two circulating fluidized bed boilers and two extraction/condensing steam turbine generator units. Steam produced by the facility will be used for space heating and refinery processes. The primary energy source will be fluid petroleum coke. The net electric power production capacity of the facility will be 42 MW. Installation will begin in December 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. The Toledo Edison Co.

[Docket No. ER90–325–000]

July 18, 1990.

Take notice that on July 16, 1990, The Toledo Edison Company tendered supplemental information regarding a proposed Interconnection and Service Agreement between Toledo and American Municipal Power-Ohio Inc.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power Inc.

[Docket No. ER90–480–000]

July 18, 1990.

Take notice that on July 3, 1990, Iowa Power Inc. (Iowa Power) tendered for filing proposed new rates for wholesale electrical service.

Iowa Power states that the new rates represent a decrease from the rates currently in effect and are based upon Iowa Power's retail rates for comparable service. Iowa Power requests an effective date of June 15, 1990, and therefore requests a waiver of the Commission's notice requirements.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Co.

[Docket No. ER80–573–008]

July 18, 1990.

Take notice that on July 13, 1990 Southwestern Public Service Company tendered for filing its Compliance Report in compliance with the Commission's orders issued on November 22, 1989 and May 11, 1990.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp.

[Docket No. ER90–499–000]

July 18, 1990.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on July 6, 1990, tendered for filing an agreement between Niagara Mohawk and Green Mountain Power (GMP) dated December 23, 1988 providing for certain transmission services to GMP. This agreement provides for the transmission and delivery by Niagara Mohawk of 50 MW of firm power from Rochester Gas & Electric Corporation (RGE); for the period June 1, 1988 through October 31, 1994; and 15 MW from Central Hudson Gas & Electric Corporation (CHGE) for the period November 1, 1988 through December 1, 1988.

An effective date of June 1, 1988 is proposed. Niagara Mohawk states that waiver of the notice requirements of 18 CFR 35.3 is warranted because GMP, the only customer under this rate schedule has consented to the effective date and the service provided by this agreement will commence on June 1, 1988.

Copies of this filing were served upon GMP and the New York State Public Service Commission.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Power Co.

[Docket No. QF86–435–001]

July 19, 1990.

On June 29, 1990, Consolidated Power Company (Applicant), of Merritt 7 Corporate Park, 401 Merritt 7, Norwalk, Connecticut, 06851, submitted for filing an application for waiver of the efficiency standard of a qualifying cogeneration facility pursuant to § 292.205(a) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Applicant requests a waiver of the efficiency standard applicable to its facility located in Lowell. Massachusetts, for the calendar year 1990 in order to comply with the New England Power Pool's (NEPOOL) request by way of the Applicant's host utility, Commonwealth Electric Company, to prepare for and meet a tight summer capacity situation by utilizing the maximum electric output of the Lowell facility. The Applicant states that it cannot affirmatively respond to and comply with NEPOOL's request without jeopardizing its ability to meet the efficiency standard.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filling should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 90–17409 Filed 7–25–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER90–490–000, et al.]

Washington Water Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 17, 1990.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Co.

[Docket No. ER90–490–000]

Take notice that on July 9, 1990, the Washington Water Power Company (WWP) tendered for filing proposed revisions to WWP's FERC Electric Tariff, Original Volume No. 3.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Co.

[Docket No. ER90–289–002]

Take notice that on July 9, 1990, Central Power and Light Company tendered for filing its Compliance Filing in the above referenced docket.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Co.; Chester SVC Partnership; and New England Hydro-Transmission Co.

[Docket No. ER90–483–000]

Take notice that on July 5, 1990, Maine Electric Power Company (MEPCO), Chester SVC Partnership (Partnership), and New England Hydro-Transmission Company (NEHT) (collectively, the "Companies) tendered for filing pursuant to section 205 of the Federal Power Act of the following Agreements:

1. Amendment No. 1 to the Phase II Maine Electric Power SVC Facilities Support Agreement dated as of January 1, 1990 between MEPCO and NEHT;

2. Assignment and Purchase and Sale Agreement dated as of July 1, 1990 between MEPCO and Partnership;

3. Ground Lease dated as of July 1, 1990 between MEPCO and Partnership;

4. Chester SVC Partnership Agreement dated as of July 1, 1990 between NORVARCO and Bangor Hydro Sub;

5. Chester SVC Partnership Basic Operating Agreement dated as of July 1, 1990 between MEPCO and Partnership;

6. Operating Committee Agreement dated January 20, 1989 between MEPco and the New Brunswick Electric Power Commission, and

7. Amendment No. 8 to Phase II New Hampshire Transmission Facilities Support Agreement ("Amendment No. 8 to New Hampshire D.C. Support Agreement") dated as of January 1, 1990.

The Companies state that the Agreements are necessary to accomplish a restructuring of the ownership and operating arrangements for certain static var compensator equipment (the "Chester SVC") constructed on MEPCO's 345 kv transmission line as a system reinforcement for the New England-Quebec Phase II interconnection expansion. Pursuant to the Agreements, the Chester SVC facility will be transferred to Partnership, and MEPCO's rights and obligations under the Maine Electric Power SVC Facilities Support Agreement dated as of October 1, 1988 (the "SVC Support Agreement") will be assigned to Partnership. MEPCO will provide operating services for Partnership. Partnership will be a Maine

general partnership whose partners will be NORVARCO and Bangor Hydro Sub, subsidiaries of Central Maine Power Company and Bangor Hydro Electric Company, respectively. Certain offsite microwave control equipment for the Chester SVC will be constructed, operated, and maintained in Maine and New Brunswick.

Amendment No. 8 to the New Hampshire D.C. Support Agreement will amend the Phase II New Hampshire Transmission Facility Support Agreement to clarify the obligations of Participants for payments made by NEHT pursuant to the SVC Support Agreement, as amended.

The Companies request that the Agreements be permitted to become effective as of their acceptance for filing, and that they be accepted for filing by September 1, 1990, to permit financing of the Chester SVC facility to be completed prior to the commencement of commercial operation of the New England-Quebec Phase II interconnection.

The Companies request, to the extent necessary, waiver of the Commission's notice and filing requirements so as to permit the Agreements to become effective as described above.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Co.

[Docket No. EL90-38-000]

Take notice that on July 9, 1990, Interstate Power Company (IPW) tendered for filing a request for waiver of FERC Regulation 35.14 to provide for a "IPW-Westmoreland Coal Contract Buy-out Recovery Plan" in the Company's fuel adjustment clause applicable to certain wholesale rate schedules. Amortization of the cost of the coal contract buy-out is proposed to begin effective July 1, 1990, therefore, IPW requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to all customers served on the related wholesale rate schedules and the Iowa Utilities Board, the Minnesota Public Utility Commission and the Illinois Commerce Commission.

Comment date: August 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific, doing business as Pacific Power & Light and Utah Power & Light

[Docket Nos. ER89-493-001 and ER89-494-001]

Take notice that on July 9, 1990, PacifiCorp, doing business as Pacific Power & Light (Pacific) and Utah Power & Light (Utah), tendered for filing in compliance with the Commission's Order dated June 8, 1990 under Docket Nos. ER89-493-000 and ER89-494-000 revised wholesale and transmission rates which reflect the elimination of CWIP from rate base and Phase-In plan for single system (rolled-in) wholesale and transmission rates.

Copies of the filing were served on all of Pacific's and Utah's affected wholesale and transmission customers or their representatives.

Comment date: July 31, 1990, in accordance with Standard Paragraph E end of this notice.

6. Commonwealth Edison Co.

[Docket No. ER90-379-000]

Take notice that on July 12, 1990, Commonwealth Edison Company (Edison) tendered for filing revised Addenda, dated June 15, 1990, to the Electric Coordination Agreement, (Village Agreement), dated December 31, 1988, between Edison and the Village of Winnetka, Illinois (Village) and to the Electric Coordination Agreement, dated December 31, 1988, between Edison and the City of Rochelle, Illinois (City) to be substituted for the Addenda, dated May 1, 1990, originally filed in the docket. The revised Addenda clarify the curtailment provisions associated with sales of daily General Purpose Energy.

Edison renews its request for an effective date of May 15, 1990. Accordingly, Edison requests a waiver of the Commission's Notice Requirements to the extent necessary.

Copies of this filing were served upon the City, the Village, and the Illinois Commerce Commission.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas & Electric Co.

[Docket No. ER90-479-000]

Take notice that San Diego Gas & Electric Company on June 29, 1990, tendered for filing proposed changes in its FERC Tariff 57, the Power Purchase and Sale Agreement between San Diego Gas & Electric Company and Escondido Mutual Water Company.

The charge extends service provided by SDG&E under FERC tariff 57 through June, 1990. The Change will not increase revenues or costs from the sale or purchase of electricity by SDG&E. SDG&E proposed to make the change effective for the period ending June 30, 1990 and has requested that the Commission waive the prior notice requirements specified in 18 CFR 35.3.

Copies of the filing were served upon SDG&E's sole jurisdictional customer, Escondido, and the California Public Utilities Commission.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Power & Light Co.

[Docket No. ER84-82-011]

Take notice that on July 3, 1990, Iowa Power and Light Company (Iowa Power) tendered for filing its Refund Compliance filing pursuant to the settlement agreements in this docket approved by the Commission on April 6, 1984, and October 28, 1987.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. PSI Energy, Inc.

[Docket No. ER90-491-000]

Take notice that PSI Energy, Inc., formerly Public Service Company of Indiana, Inc., on July 9, 1990 tendered for filing pursuant to the Power Coordination Agreement between PSI Energy, Inc. (PSI) and Indiana Municipal Power Agency (IMPA) a Fifth Amendment.

The Fifth Amendment modifies the agreements by modifying § 2.01 to transfer the Town of Advance, Indiana and the Town of Ladoga, Indiana from PSI's FERC Electric Tariff—Original Volume No. 1 to the Power Coordination Agreement as members of IMPA.

Copies of the filing were served on Indiana Municipal Power Agency, the Town of Advance, Indiana, the Town of Ladoga, Indiana and the Indiana Utility Regulatory Commission.

PSI has requested waiver of the Commission's notice requirement to permit the filing to become effective July 1, 1990.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas Power and Light Co.

[Docket No. ER90-497-000]

Take notice that on July 12, 1990, the Kansas Power and Light Company (KPL) tendered for filing an amendment to the Electric Sales, Transmission and Service Contract, with Kansas Electric Power Cooperative, Inc. (KEPCo) (Amendment). Revised Service Schedules, Pricing Schedules and Exhibit B, reflecting the provisions of the Amendment were also filed. The proposed tariff changes are as follows:

Tariff change	FERC rate schedule No.
Contract Amendment	247
Service Schedules A-E	247
Pricing Schedules A-E	247
Exhibit B To Contract	247

These rate schedules have been revised to provide for changes in the use of KEPCo's capacity resources in the KPL control area, changes in the terms under which Standby Transmission Service is provided and a change in the method of determining monthly billing capacity under Pricing Schedule KEPCo-a. Under the new schedule, billing capacity is based on the sum of the average KVA loads occurring at the points of delivery during the hour of KPL's greatest net load for the month, rather than the sum of the average KVA loads occurring at the points of delivery during KEPCo's maximum sixty minute group coincident usage during the month.

This change in billing capacity determination method provides KEPco the opportunity to utilize its ability to manage its loads more effectively, resulting in improvement in KPL's system load factor and to obtain the benefit of the diversity that exists between KEPCo's load and other KPL loads. The remaining changes provide KEPCo the opportunity to better utilize its capacity resources and provides both parties an improved contractual relationship.

A copy of the filing was served on each of the affected customers and the State Corporation Commission of the State of Kansas.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. California Energy Co. Inc.

[Docket No. QF84-61-003]

On July 6, 1990, California Energy Company, Inc. (Applicant), of 9th floor, 601 California Street, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Churchill County, Nevada. The primary Energy source is geothermal hot water and steam. The electric power production capacity is 9 megawatts. There is no planned usage of natural gas, oil or coal by the facility.

The certification of the original application was issued on February 6, 1984 (26 FERC ¶ 62,098). Instant recertification is requested due to a change in ownership and inclusion of a 4.7 mile, 120 kV transmission line.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Maryland Waste Disposal Authority

[Docket No. QF90-185-000]

On July 12, 1990, Northeast Maryland Waste Disposal Authority (Applicant), of 25 South Charles Street, Suite 2105, Baltimore, Maryland 21201, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Montgomery County, Maryland. The facility will consist of three mass-burn waterwall boilers and one steam turbine generator. The net electric power production capacity will be 69 megawatts. The primary energy source will be municipal solid waste. Construction of the facility is expected to begin on or about October 1990. Natural gas will be used for flame stabilization, start-up and shutdown, however, such fossil fuel usage will not exceed 10% of the total energy input to the facility during any calendar year period.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17410 Filed 7-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1715-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

July 17, 1990.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket No. CP90-1715-000]

Take notice that on July 10, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-1715-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service performed by CIG for Peoples Natural Gas Company, Division of UtiliCorp Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to abandon Peoples' General Daily Entitlement by 2,523 Mcf from 14,444 Mcf to 11,921 Mcf and its Total Annual Entitlement by 2,929,505 Mcf from 4,640,505 Mcf to 1,711,000 Mcf. CIG proposes that these decreases be made effective on July 1, 1990.

Comment date: August 7, 1990, in accordance with Standard Paragraph F at the end of the notice.

2. Williams Natural Gas Co.

[Docket No. CP90-1724-000]

Take notice that on July 11, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-1724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace and relocate the Kansas Public Service Company West Lawrence town border setting and to abandon in place approximately 700 feet of 4-inch and 6-inch pipeline located in Douglas County, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that the West Lawrence town border is no longer needed since their load pattern has changed and their current grid system would be better

served at the new location off WNG's South Topeka 16-inch pipeline.

WNG states further that the volumes currently being delivered are 8,693 Mcf on a peak day and 506,125 Mcf annually and these volumes are expected to remain unchanged at the new location.

It is said that the estimated cost of the replacement facilities is approximately $38,780, which would be paid from funds on hand.

It is further said that the proposed change is not prohibited by an existing tariff and that WNG has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: August 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corp.

[Docket No. CP90-1725-000]

Take notice that on July 11, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah § 84108, filed in Docket No. CP90-1725-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to (1) Abandon facilities at the Covington Meter Station, (2) construct and operate expanded facilities at the Covington Meter Station, (3) reallocate part of its existing maximum daily delivery obligation (MDDO) for firm service to Washington Natural Gas Company (Washington Natural) from the South Seattle delivery point to the Covington delivery point, and (4) increase the minimum delivery pressure at the Covington delivery point, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the existing Covington Meter Station has a design capacity of approximately 7,100 dts per day at a delivery pressure of 300 psig. Northwest further states that Washington Natural requested that Northwest expand the existing Covington Meter Station to deliver a maximum of 134,000 dts per day of natural gas at a minimum delivery pressure of 400 psig.

It is stated that to accommodate Washington Natural's request, the existing two 4-inch orifice meter run, regulators, and appurtenances would be removed and replaced with two 12-inch turbine meter runs, three 4-inch monitor regulator runs, and a filtered separator and appurtenances. It is further stated that the existing 6-inch line tap on Northwest's mainline and the 4-inch line tap on Northwest's mainline loop and miscellaneous piping would remain and would be utilized in the expansion of the Covington facilities.

It is said that the cost of removing the existing Covington Meter Station facilities is estimated to be approximately $6,000. It is further said that the total cost of installing the expanded Covington Meter Station is estimated to be approximately $546,760.

It is said that, in conjunction with the proposed meter station expansion, Northwest would accommodate Washington Natural's request for a 47,000 dt increase in the MDDO at the Covington delivery point from 3,600 dt to 50,600 dt, offset by a 47,000 dt reduction in MDDO at the South Seattle delivery point, from 97,000 dt to 50,000 dt and also increase the minimum delivery pressure at Covington from 300 psig to 400 psig.

Comment date: August 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Co.

[Docket Nos. CP90-1727-000, CP90-1728-000 and CP90-1729-000]

Take notice that on July 12, 1990, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket Nos. CP90-1727-000, CP90-1728-000 and CP90-1729-000, requests pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for Seagull Marketing Services, Inc., a marketer, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

The specific information related to each of the above referenced applications, including the identity of the shipper, volumes, service commencement date, and related docket numbers, have been provided by United and is summarized in the attached appendix to this notice.

Comment date: August 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Shipper	Volumes-MMBtu (peak, average, annual)	Commence date ST docket	Receipt/delivery point point (state)
CP90-1727-000	SEAGULL	515,000 515,000 187,975,000	4-3-90, ST90-03550	Multiple.
CP90-1728-000	SEAGULL	187,975,000 187,975,000 187,975,000	4-10-90, ST90-03552	Multiple.
CP90-1729-000	SEAGULL	187,975,000 187,975,000 187,975,000 187,975,000	6-7-90, ST90-03577	Multiple.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of The Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-17411 Filed 7-25-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-1709-000, et al.]

Natural Gas Pipeline Co. of America, et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Co.

[Docket No. CP90-1709-000]

July 18, 1990.

Take notice that on July 10, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-1709-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting an approving abandonment of gas storage service provided to certain customers under Natural's LS-2 and LS-3 Rate Schedules, all as more fully set forth in the appliction which is on file with the Commission and open for public inspection.

Natural states that it surveyed its six SL-2 and fourteen LS-3 storage customers on November 3, 1989, to determine which customers wished to continue service beyond April 1, 1990, the expiration date of their service agreements. Natural further states that two of the customers receiving storage service under its LS-2 Rate Schedule elected to terminate their service, while seven of the customers receiving storage service under its LS-3 Rate Schedule elected to terminate their service. Natural asserts that the proposed abandonment would reduce the total storage service under LS-2 by 93 Mcf per day to 100,573 Mcf per day and would reduce the total storage service under LS-3 by 528 Mcf per day to 18,440 Mcf per day. Finally, Natural states the proposal would not result in the abandonment of any facilities and would not adversely impact the quality of service provided to its existing customers.

Comment date: August 8, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Co.

[Docket Nos. CP90-1744-000,[1] CP90-1745-000, CP90-1746-000, and CP90-1747-000]

July 18, 1990.

Take notice that on July 13, 1990, ANR Pipeline Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg., annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP90-1744-000, 7-13-90	ANR Pipeline Co., 500 Renaissance, Center, Detroit, MI 48243.	Kaztex Energy Management, Inc..	32,584 32,342 11,893,160	LA, OK, KS, TX, Off. TX, Off. LA, IL, IN, MI, WI, OH, and KY.	WI, MI	5-25-90, ITS	CP88-532-000, ST90-3517-000.
CP90-1745-000, 7-13-90	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	The Northwestern Mutual Life Insurance Co..	200,000 200,000 73,000,000	Off. LA, LA, Off. TX..	IN	5-22-90, ITS	CP88-532-000, ST90-3495-000.
CP90-1746-000, 7-13-90	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	NGC Transportation, Inc..	10,000 10,000 3,650,000	LA, Off. LA	OH	5-23-90, FTS-1	CP88-532-000, ST90-3518-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg., annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-1747-000, 7-13-90	ANR Pieline Co., 500 Rennaissance Center, Detroit, MI 48243.	Midcon Marketing Corp..	250,000 250,000 91,250,000	LA, OK, KS, TX, Off. LA, Off. TX, and IL.	LA	5-17-90, ITS	CP88-532-000, ST90-3387-000.

[1] Quantities are shown in dth unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Natural Gas Pipeline Co. of America

[Docket No. CP90-1751-000]

July 18, 1990.

Take notice that on July 16, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in docket No. CP90-1751-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Hadson Gas Systems, Inc. (Hadson), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Continental between points of receipt in Colorado, New Mexico, Texas, Oklahoma, offshore Texas, Illinois, Louisiana, offshore Louisiana, Arkansas, Kansas, and Iowa, and delivery points located in Illinois, Louisiana, offshore Louisiana, Texas, Missouri, Nebraska, Oklahoma, New Mexico, Iowa and Kansas.

Natural further states that the maximum daily, average and annual quantities that it would transport for Hadson would be 300,000 MMBtu equivalent of natural gas (plus any additional quantities accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 75,000 MMBtu equivalent of natural gas and 27,375,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on June 1, 1990, at Docket No. ST90-3385, it reported that transportation service for Hadson begun on May 10, 1990, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-1692-000]

July 18, 1990.

Take notice that on July 13, 1990, Transcontinental Gas Pipe Line Corporation (Transco) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1692-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to create an additional delivery point for delivery for one of its existing gas sales customers, Public Service Electric and Gas Company (PSE&G), and to construct and operate certain appurtenant facilities, under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that PSE&G is currently a sales and transportation customer under various rate schedules. Under a service agreement dated May 1, 1988, Transco states that PSE&G has a Rate Schedule CD-3 contract demand of 68,334 Mcf per day (Mcfd) and a firm transportation entitlement of 343,193 Mcfd. Further, Transco states that pursuant to a March 2, 1988 service agreement between Transco and PSE&G, PSE&G has an additional firm transportation entitlement of 6,222 Mcfd. It is also stated that Transco's tariff does not prohibit the addition of the proposed delivery point.

It is stated that Transco has agreed to install an additional meter station for PSE&G utilizing an existing 10-inch tap, located at approximate Milepost 15.54 on the existing Woodbury lateral in West Deptford Township, Gloucester County, New Jersey, adjacent to an existing meter station in order to measure incremental quantities of gas PSE&G will deliver into the Eagle Point Refinery Cogeneration Plant, hereinafter referred to as the West Deptford Cogeneration Delivery Point. Transco states that the proposed West Deptford Cogeneration Delivery Point will be designed for a maximum daily rate of up to 52,800 Mcfd. According to Transco, PSE&G's total sales and firm transportation allocation would not be altered from its current level. Additionally, Transco states that it has sufficient capacity to accomplish deliveries at the West Deptford Cogeneration Delivery Point without detriment or disadvantage to its other gas sales customers. Further, Transco states that the addition of the West Deptford Cogeneration Delivery Point will have no effect on Transco's peak day or annual volumetric deliveries to PSE&G or any other existing sales customer.

Transco states that it will construct, install and operate at the West Deptford Cogeneration Delivery Point a sales meter and regulating station and other appurtenant facilities, at a site owned by PSE&G and at a total cost estimated at $369,000, which will be directly reimbursed by PSE&G. Transco avers that the construction, installation and operation of such facilities will comply with the environmental requirements set forth in § 157.206 of the Regulations.

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Mississippi River Transmission Corp.

[Docket No. CP90-1742-000 Docket No. CP90-1743-000]

July 18, 1990.

Take notice that on July 13, 1990, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation

[2] These prior notice requests are not consolidated.

service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day[2] avg., annual	Points of		Start up date rate schedule	Related[3] dockets
			Receipt	Delivery		
CP90-1742-000 (7-13-90)	Enserch Gas Co.	200,000 200,000 73,000,000	LA, AR, TX, and IL	AR, IL, LA, MO, TX, and OK.	5-23-90 ITS	ST90-3534-000.
CP90-1743-000 (7-13-90)	Santanna Natural Gas Corp..	100,000 100,000 36,500,000	OK, LA, TX, IL, and AR	AR, IL, MO, TX, and LA	5-25-90 ITS	ST90-3533-000.

[2] Quantities are shown in MMBtu unless otherwise indicated.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

6. Amoco Production Co.

[Docket No. CI90-93-000]

July 18, 1990.

Take notice that on April 20, 1990, Amoco Production Company (Amoco) of P.O. Box 3092, Houston, Texas 77253, filed an application pursuant to section 7(b) of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization to abandon its compressor facility certificated in Docket No. CI81-406 located in St. Landry Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

According to Amoco the compressor facility was constructed and operated to deliver gas to Florida Gas Transmission Company and Florida Power and Light Company in partial satisfaction of Amoco's warranty obligations to those companies. In support of its proposed abandonment, Amoco states that its warranty obligations have ended and gas is no longer being delivered to Florida Gas Transmission Company through the compressor facility.

Comment date: August 6, 1990, in accordance with Standard Paragraph J at the end of this notice.

7. Amoco Production Co.

[Docket No. CI90-117-000]

July 18, 1990.

Take notice that on May 29, 1990, Amoco Production Company (Amoco) of P.O. Box 3092, Houston, Texas 77253, filed an application pursuant to section 7(b) of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization to abandon its compressor facility certificated in Docket No. CI82-213, as amended, located in Stone County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

According to Amoco the compressor facility was constructed and operated to deliver gas to Florida Gas Transmission Company (Florida Gas) and Florida Power and Light Company. In support of its proposed abandonment, Amoco states that it has entered into a letter of intent with Florida Gas wherein Florida Gas agrees to purchase the compressor unit and related facilities upon receipt by Amoco of abandonment authorization. Amoco indicates that Florida Gas will acquire and operate the compressor facility pursuant to its blanket certificate in Docket No. CP82-553 which authorizes routine activities and that no interruptions or delays are anticipated with respect to the operation of the compression facility.

Comment date: August 6, 1990, in accordance with Standard Paragraph J at the end of this notice.

8. United Gas Pipe Line Co.

[Docket No. CP90-1754-000, CP90-1755-000; and CP90-1756-000]

July 19, 1990.

Take notice that on July 16, 1990, United Gas Pipe Line Company (Applicant), Post Office Box 1478, Houston, Texas 77251-1478, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day [1] avg., annual	Points of		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP90-1754-000 (7-16-90)	Kogas, Inc	206,000 206,000 75,190,000	TX, LA	TX, MS and LA	5-18-90, ITS	ST90-3715-000.
CP90-1755-000 (7-16-90)	Consolidated Fuel Corp	77,250 77,250 28,196,250	LA, MS	LA, MS	6-18-90, ITS	ST90-3693-000.
CP90-1756-000 (7-16-90)	Laser Marketing Co	618,000 618,000 225,570,000	Off. TX, On. TX, Off. LA, On. LA, MS and AL.	MS, TX, FL, AL and LA	6-19-90, ITS	ST90-3694-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Transwestern Pipeline Co. Southern Natural Gas Co.

[Docket No. CP90-1736-000 CP90-1737-000]

July 19, 1990.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in CP88-133-000 and CP88-316-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [2]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-1736-000 (7-13-90)	Enron Gas Marketing, Inc. (Marketer).	100,000 75,000 36,500,000	Various	Various	5-31-90, ITS, Interruptible.	ST90-3615-000, 6-15-90.
CP90-1737-000 (7-13-90)	Olympic Pipeline Co. (Intrastate).	20,000 20,000 7,300,000	OTX, OLA, TX, LA, MS, and AL.	GA, SC	4-18-90, IT, Interruptible.	ST90-3325-000, 5-18-90.

[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Florida Gas Transmission Co., Southern Natural Gas Co.,

[Docket No. CP87-415-002]

Tennessee Gas Pipeline Co.,

[CP88-437-000]

10. Mobile Bay Pipeline Projects

[CP86-570-000]

Florida Gas Transmission Co., Southern Natural Gas Co., Tennessee Gas Pipeline Co.,

[CP89-464-001]

Texas Eastern Transmission Corp., ANR Pipeline Co.,

[CP89-511-000]

Texas Eastern Transmission Corp.,

[CP89-512-000]

Southern Natural Gas Co.,

[CP89-513-000]

July 19, 1990.

Take notice that on July 11, 1990,[5] Florida Gas Transmission Company, P.O. Box 1188, Houston, Texas 77251-1188, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563 and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 (Applicants), filed an application in Docket No. CP89-464-001 to amend its December 21, 1988, filing in Docket No. CP89-464-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

As part of a settlement (submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure) filed in the above listed applications, Applicants would alter the original proposal to: include Texas Eastern Transmission Corporation (Tetco) and ANR Pipeline Company (ANR) as partners; construct minor facilities to interconnect with Tetco and ANR; construct lateral pipelines to connect to the Shell Offshore Inc. and Jubilee Pipeline Company processing plants; and, downsize the originally proposed lateral to the Exxon Corporation processing plant from 36-inch to 24-inch.

Comment date: August 9, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[5] The notice of amendment was tendered for filing on June 28, 1990; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until July 11, 1990. Section 381.103 of the Commission's Rules provides that the filing is the date on which the fee is paid.

11. Colorado Interstate Gas Co.

[Docket No. CP90-1759-000]

July 19, 1990.

Take notice that on July 17, 1990, Colorado Interstate Gas Company, P.O.

Box 1087, Colorado Springs, Colorado 80944, (Colorado Interstate), filed in Docket No. CP90–1759–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sun Gas Transmission Limited Partnership, a producer, under the blanket certificate issued in Docket No. CP86–589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Colorado Interstate states that, pursuant to an agreement dated April 1, 1990, under its Rate Schedule TI–1, it proposes to transport up to 30,000 Mcf per day of natural gas. Colorado Interstate indicates that the gas would be transported from receipt points located in Wyoming and Oklahoma, and would be redelivered in Beaver County, Oklahoma.

Colorado Interstate advises that service under § 284.223(a) commenced April 1, 1990, as reported in Docket No. ST90–2775–000. Colorado Interstate further advises that it would transport 20,000 Mcf on an average day and 7,000,000 Mcf annually.

Comment date: September 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90–17412 Filed 7–25–90; 8:45 am]

BILLING CODE 6717–17–M

Office of Energy Research

Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion; Joint Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following joint meeting:

Name: Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion.

Date & Time:

August 27, 1990—8:30 a.m.–5 p.m.

August 28, 1990—8 a.m.–5 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 1E–245, Washington, DC 20585, (202) 586–5444.

Contact: William Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5767.

Purpose of the Committees

The purpose of the Fusion Policy Advisory Committee is to review the conduct of the Department of Energy's magnetic and inertial confinement fusion programs and to recommend to the Department a policy for the development of fusion energy for civilian applications. The purpose of the Technical Panel on Magnetic Fusion is to perform a review of the conduct of the national magnetic fusion energy program as mandated by the Magnetic Fusion Engineering Act of 1980 (Pub. L. 96–386). The Committee and the Panel memberships are identical and both charters cover the magnetic fusion research programs of the Department of Energy.

Tentative Agenda

August 27, 1990

8:30 a.m. Administrative Items
8:45 a.m. Discussion of Topics for Final Report
12 Noon Lunch
1 p.m. Discussion of Topics for Final Report
4:50 p.m. Public Comment (10 minute rule)
5 p.m. Adjourn

August 28, 1990

8 a.m. Administrative Items
8:15 Discussion of Topics for Final Report
12 Noon Lunch
1 p.m. Discussion of Topics for Final Report
4:50 p.m. Public Comment (10 minute rule)
5 p.m. Adjourn

Public Participation

The joint meeting is open to the public. Written statements may be filed with the Committee either before or after the joint meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days pror to the joint meeting and reasonable provsions will be made to include the presentation on the agenda.

Transcripts

The transcript of the joint meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on: July 23, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–17494 Filed 7–25–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–32–NG]

Midland Cogeneration Venture Limited Partnership; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Midland Cogeneration Venture Limited Partnership (MCV) authorization to import up to 20 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, July 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–17493 Filed 7–25–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–62090; FRL–3769–5]

Financial Assistance Program Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: The EPA's Office of Toxic Substances is announcing a financial assistance program for States, called the "Enhancement Grants for State Asbestos Programs." The specific aims of this program are to promote the development of State inspection and management programs for schools and training and certification programs for those working in the asbestos abatement industry. A more general objective is to "enhance" the overall capacity of State asbestos programs to deal more effectively with the full range of asbestos management problems, issues, and needs. The Agency is also announcing its plans to administer this program through its 10 Regional Offices. Eligible applicants will be notified and invited to make application through the distribution of cooperative agreement guidance. Subject to the availability of funds, the next round of awards is anticipated during federal fiscal year 1991. Eligible applicants will include the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and federally-recognized Indian tribes. ("States" is used in this announcement to refer to all eligible applicants.) Awards will be made under authority of sections 10 and 28 of the Toxic Substances Control Act (TSCA), and recipients will be required to provide a match of 25 percent of the total project cost.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M St., SW., Washington, DC 20460, (202) 382–3949, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances is interested in enhancing State asbestos management program capabilities, and, to the extent that funds become available, is offering financial assistance for this purpose. The Asbestos Hazard Emergency Response Act (AHERA) provides certain opportunities for State involvement which EPA is seeking to promote. Section 203(m) of AHERA allows States to administer their own school inspection and management programs through a waiver provision, and section 206(b)(2) requires States to adopt asbestos contractor accreditation plans at least as stringent as the EPA Model Plan (40 CFR part 763, appendix C to subpart E). In addition to pursuing these core program activities, many States have also developed innovative State programs for addressing other facets of asbestos hazard management. EPA views these State innovations as strongly supporting and furthering its core program aspirations. EPA will encourage States to develop and submit applications relating to any or all of the following activity categories: (1) Developing comprehensive State asbestos management plans, (2) developing State accreditation programs, (3) developing State inspection and management programs, (4) expanding State assistance programs, (5) improving public accessibility to and State tracking of asbestos data, and (6) integrating existing programs within States.

State agencies or organizations wishing to submit an application under this program should coordinate the development of their project proposal through their Regional Asbestos Coordinator. These EPA Regional points of contact are as follows:

Region I: (CT, MA, ME, NH, RI, VT)
Contact: Asbestos Coordinator (617) 565–3835
Region II: (NY, NJ, PR, VI)
Contact: Asbestos Coordinator (201) 321–6671
Region III: (DE, MD, PA, VA, WV, DC)
Contact: Carole Dougherty (215) 597–3160
Region IV: (AL, FL, GA, KY, MS, NC, SC, TN)
Contact: Asbestos Coordinator (404) 347–5014
Region V: (IL, IN, MI, MN, OH, WI)
Contact: Tony Restaino (312) 886–6003
Region VI: (AR, LA, NM, OK, TX)
Contact: John West (214) 655–7244
Region VII: (IA, KS, MO, NE)
Contact: Wolfgang Brandner (913) 551–7381
Region VIII: (CO, MT, ND, SD, UT, WY)
Contact: David Combs (303) 293–1442
Region IX: (AZ, CA, HI, NV, AS, GU, MP)
Contact: Jo Ann Semones (415) 556–5406
Region X: (AK, ID, OR, WA)

Contact. Asbestos Coordinator (206) 442-4762.

The Catalog of Federal Domestic Assistance number assigned to this program is 66.706. This program is eligible for intergovernmental review under Executive Order 12372 (E.O. 12372) and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States' Single Point of Contact (SPOC) must notify the following office in writing within 30 days of this publication about whether their States' official E.O. 12372 process will review applications under this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's SPOC for intergovernmental review as early as possible, to determine if the program is subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments concerning applications to the appropriate Regional Asbestos Coordinator listed above no later than 60 days after receipt of the application or other material for review.

Dated: July 19, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-17475 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-F

[WH-FRL-3813-7]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR part 35, subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1988 construction grant funds subject to reallotment after September 30, 1989, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and the reallotment of FY 1982 funds set aside to fund an interceptor sewer for the New York City Convention Center under Public Law No. 97-216. The procedures by which the reallotment distributions were determined are also explained.

The construction grants program operates under authority of the Clean Water Act (the Act), Public Law No. 92-500, as amended. Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of their availability "* * * shall be immediately reallotted by the Administrator * * *." This notice advises the public of the reallotted FY 1988 amounts to be made available to the eligible States. A portion of the FY 1988 funds, totalling $1,000,000, will be made available to the National Small Flows Clearinghouse as required under section 104(g) of the Act as amended by Public Law No. 100-4. In addition, FY 1982 funds allocated to the New York City Convention Center prior to the national distribution of those FY 1982 funds are being reallotted. Funds being reallotted to participating States are added to their allotments for grants for the construction of municipal wastewater treatment facilities. Under section 205(d), these funds are available for obligation until September 30, 1991.

DATES: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382-5858.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010[b]). Funds not obligated at the end of this period of availability are reallotted under section 205(d) to the States which fully obligated their allotments, after funds are made available to the National Small Flows Clearinghouse as required in section 104(g) of the Act. Section 104(g) requires the Administrator to make available to the Small Flows Clearinghouse, from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. In Public Law No. 100-202, Congress appropriated a total of $2,304 billion for FY 1988 funding of the construction grants program. At the close of the availability period for the FY 1988 allotment (September 30, 1989), 10 States and Territories had not obligated $2,698,150 of the $2.304 billion available in FY 1988 allotments. The $2,698,150 consists of funds reserved under section 205(i) and section 205(h) for innovative and alternative projects and small communities.

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment under section 205(d), as modified by section 104(g). Due to the following exception for the Northern Mariana Islands, the total amount reallotted is $2,451,171.

Northern Mariana Islands

Section 3(b)(2) of Public Law No. 95-348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 "* * * are hereby authorized to remain available until expended." Accordingly, construction grant funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $246,979 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other States.

Interceptor Sewer for New York City Convention Center

In 1981, Public Law No. 97-117 amended the Act by adding a subsection (k) to section 205. Subsection (k) provided for an additional allotment within the FY 1982 appropriation to fund construction of an interceptor sewer for the New York City Convention Center. Public Law No. 97-216 (Urgent FY 1982 Supplemental Appropriation Act) provided that one-third of that projects's costs be allocated prior to the national distribution of that appropriation. The funds set aside for the interceptor sewer for the New York City Convention Center were not needed for the project and are therefore being reallocated to the States. The estimated total costs of the project at the time were $2,799,000. The remaining two-thirds of the cost was to be divided evenly between New York's and New Jersey's regular allotments. The $933,000 set aside from each of New York's and New Jersey's FY 1982 allotments, totalling $1,666,000, are now available for their use.

Reallotment Procedure—FY 1988 Funds

To distribute the $2,451,171 that are subject to reallotment in accordance with the requirements of sections 205(d) and 104(g) of the Act, the following procedures were used:

1. The sum of $1,000,000 was subtracted from the total subject to reallotment. This amount is being made available to the Small Flows Clearinghouse and reduce the amount

for reallotment to the participating States to $1,451,171.

2. The State allotment shares listed in section 205(c)(3) of the act were adjusted to reflect the absence of States which did not fully obligate their funds (40 CFR 35.2010(b)).

3. The resulting allotment shares were then applied to the $1,451,171 to arrive at each participating State's reallotment amount. The resulting figures (rounded to the nearest $10, except for New York which is used as the balancing factor) are listed in the table which follows in the column titled "Reallotment Funds FY 1988."

4. The table also identifies the States which did not fully obligate their funds and displays these amounts in the first column titled "Subject to Reallotment FY 1988."

Additional Reallotment—FY 1982 Funds

To reallot the FY 1982 funds of $933,000, the following procedures were used:

1. The FY 1982 State allotment share as published in the September 23, 1983, **Federal Register** Notice of Allotment (47FR42024) was multiplied by $933,000 to derive each State's distribution.

2. The amount for each State was then rounded to the nearest $10 (except for New York which is used as a balancing factor).

3. The distributed amounts are listed in the Attached Table in the column labeled "Total Funds 1982."

Total Reallotment

To derive the Total Reallotment, amounts for each State in the column labeled "Reallotment Funds FY 1988" were added to the State's amounts in the column labeled "Total Funds FY 1982." The total reallotment is shown in the last column labeled "Total Reallotment."

These reallotted funds are available for obligation until September 30, 1991. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date of the funds are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: June 25, 1990.

William K. Reilly,

Administrator.

TOTAL REALLOTMENT OF FUNDS

[FY 1988]

States	Subject to reallotment FY 1988	Reallotment funds FY 1988	Allotment ratio FY 1982	Total funds FY 1982	Total reallotment
Alabama	0	$17,120	0.012664	$11,820	$28,940
Alaska	0	9,160	0.004931	4,600	13,760
Arizona	0	10,340	0.007650	7,140	17,480
Arkansas	0	10,020	0.007409	6,910	16,930
California	0	109,520	0.078410	73,160	182,680
Colorado	0	12,250	0.009060	8,450	20,700
Connecticut	0	18,760	0.010919	10,190	28,950
Delaware	507,375	0	0.004931	4,600	4,600
Dist. of Columbia	0	7,520	0.004931	4,600	12,120
Florida	0	51,690	0.037834	35,300	86,990
Georgia	0	25,890	0.018149	17,870	43,760
Hawaii	711,520	0	0.007818	7,290	7,290
Idaho	0	7,520	0.004931	4,600	12,120
Illinois	0	69,260	0.051223	47,790	117,050
Indiana	0	36,900	0.027295	25,470	62,370
Iowa	0	20,720	0.012774	11,920	32,640
Kansas	0	13,820	0.008681	8,100	21,920
Kentucky	0	19,490	0.014415	13,450	32,940
Louisiana	0	16,830	0.012450	11,620	28,450
Maine	0	11,850	0.007391	6,900	18,750
Maryland	0	37,040	0.027392	25,560	62,600
Massachusetts	0	51,990	0.029133	27,180	79,170
Michigan	0	65,840	0.040734	38,000	103,840
Minnesota	0	28,150	0.018432	17,200	45,350
Mississippi	0	13,800	0.009526	8,890	22,690
Missouri	0	42,450	0.024611	22,960	65,410
Montana	0	7,520	0.004931	4,600	12,120
Nebraska	0	7,830	0.005429	5,070	12,900
Nevada	0	7,520	0.004931	4,600	12,120
New Hampshire	0	15,300	0.008688	8,110	23,410
New Jersey	0	62,580	0.035220	32,860	95,440
New Mexico	0	7,520	0.004931	4,600	12,120
New York	0	169,001	0.104737	97,760	266,761
North Carolina	0	27,640	0.019534	18,230	45,870
North Dakota	0	7,520	0.004931	4,600	12,120
Ohio	0	86,210	0.0063759	59,500	145,710
Oklahoma	0	12,370	0.009150	8,540	20,910
Oregon	0	17,300	0.012794	11,940	29,240
Pennsylvania	0	60,660	0.043012	40,130	100,790
Rhode Island	522,481	0	0.005179	4,830	4,830
South Carolina	0	15,690	0.011603	10,830	26,520
South Dakota	0	7,520	0.004931	4,600	12,120
Tennessee	0	22,240	0.015271	14,250	36,490
Texas	0	69,990	0.043029	40,150	110,140
Utah	0	8,070	0.004931	4,600	12,670
Vermont	0	7,520	0.004831	4,510	12,030
Virginia	0	31,340	0.019330	18,030	49,370
Washington	0	26,630	0.017443	16,270	42,900
West Virginia	0	23,870	0.017655	16,470	40,340

TOTAL REALLOTMENT OF FUNDS—Continued

[FY 1988]

States	Subject to reallotment FY 1988	Reallotment funds FY 1988	Allotment ratio FY 1982	Total funds FY 1982	Total reallotment
Wisconsin	0	41,400	0.019233	17,940	59,340
Wyoming	51,979	0	0.004931	4,600	4,600
American Samoa	82,480	0	0.000607	570	570
Guam	59,680	0	0.000734	680	680
Northern Marianas	0	0	0.000136	130	130
Puerto Rico	502,521	0	0.011571	10,800	10,800
Pacific Trust Terr	7,150	0	0.001373	1,280	1,280
Virgin Islands	5,985	0	0.000373	350	350
Small Flows Clearinghouse		1,000,000			1,000,000
Total	2,451,171	$2,451,171	0.999902	$933,000	$3,384,171

[FR Doc. 90-17479 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3813-6]

Development of a Biologically Based Model for Dioxin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a working meeting to be held by EPA's Office of Health and Environmental Assessment (OHEA) and the Institute for Evaluating Health Risks to discuss the development of a preferred model for quantitatively expressing the carcinogenic risk of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCCD, dioxin).

DATES: The meeting will be held on Thursday, August 2, 1990, from 9 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Environmental Health Sciences, Research Triangle Park, NC, 27709, Conference Room B-204. Members of the public may attend as observers. Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the meeting. To attend as an observer, contact Dr. William Farland (Tel: 202-382-7315). Space is limited.

FOR FURTHER INFORMATION CONTACT: Dr. William Farland, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Tel. 202/382-7315 or FTS 382-7315).

SUPPLEMENTARY INFORMATION: It is the opinion of some in the scientific community that the linearized multistage model may not be appropriate for TCDD; that is, a model that accommodates a receptor-mediated process may better express the biological basis for TCDD toxicity and may be essential for estimating the carcinogenic response across species, including humans. Thus, this meeting will focus on a discussion of progress in the development of alternative models, the opinions of scientists on the various concepts, and the development of a broad outline of key elements to consider in the development of any model. This topic will be discussed in greater detail at the Banbury Conference on Biological Basis for Risk Assessment of Dioxins and Related Compounds, to be held October 21 to 24, 1990, at the Banbury Conference Center, Cold Spring Harbor Laboratory, Long Island, NY. For more information on the Banbury Conference, contact the Banbury Center at 519/549-0507.

Dated: July 19, 1990.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90-17478 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3813-8]

Meeting on Planned Changes to Radon Measurement Proficiency Program

TIME AND DATE: August 6, 1990.

PLACE: EPA Auditorium, 401 M St. SW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: This meeting will describe the planned changes ot the Radon Measurement Proficiency Program.

CONTACT PERSON FOR MORE INFORMATION: Maggie FitzPatrick, Environmental Protection Specialist, (202) 475-9623.

Maggie Fitzpatrick,

Environmental Protection Specialist.

[FR Doc. 90-17484 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-60012; FRL-3775-7]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices were issued following issuance of Data Call-In Notices by the Agency and the failure of registrants subject to the Data Call-In Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3 (c)(2)(B). As required by section 6 (f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance

Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-3376.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Ofice of Pesticides and Toxic Substances

Washington,DC20460

CertifiedMail

Return Receipt Requested

[Addressee Information]

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12 (a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific items where failure to comply has resulted in this intent to suspend are listed in the following two attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B), however, provides that the only issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. If a hearing is requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing must (1) State which allowable issues are to be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts, pertaining to any of the allowable issues for which you have requested a hearing. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit cannot be extended. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s).

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed on Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspensions must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (202) 382-3376.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

Table 1—List of Products

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Atochem N.A. (formerly Pennwalt Corp.)	4581-255	Maneb	Maneb 80	7/5/90
	4581-357	Mancozeb	Penncozeb Fungicide for Turf and Ornamentals.	
	4581-358	Mancozeb	Penncozeb Fungicide	
	4581-359	Maneb	Maneb Plus Zinc F4 Fungicide	
	4581-370	Mancozeb	Penncozeb DF	
BASF Corporation	7969-70	Metiram	Polygram 80 WP Fungicide	7/5/90
E. I. DuPont DeNemours Co. Inc.	352-341	Mancozeb	DuPont Manzate 200 Fungicide	7/5/90
	352-343	Mancozeb	Tersan LSR Fungicide	
	352-398	Mancozeb	DuPont Manzate 200 Flowable Fungicide	
	352-449	Mancozeb	DuPont Manzate 200 DF Fungicide	
Rohm & Haas Co.	707-3	Nabam	Dithane D-14 Agricultural Fungicide	7/5/90
	707-70	Nabam	Dithane A-40	
	707-78	Mancozeb	Dithane M-45 Agricultural Fungicide	
	707-87	Mancozeb	Fore Turf and Ornamental Fungicide	
	707-93	Mancozeb	Dikar-Fungicide-Miticide	
	707-97	Mancozeb	Dithane M-45 Seed Protectant	
	707-156	Mancozeb	Dithane F-45 Flowable Agricultural Fungicide	
	707-162	Mancozeb	Dithane M-45 Flowable M	
	707-179	Mancozeb	Dithane M-45 DF/70 Agricultural Fungicide	
	707-180	Mancozeb	Dithane DF	

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

Table B—List of Requirements

Registrant Affected	Requirement Name	Original Due-Date	Extended Due-Date
Atochem N.A.(formerly Pennwalt Corp.)	Tank mix stability study (no guideline reference no.)	12/31/89	4/30/90
BASF Corporation	Tank mix stability study (no guideline reference no.)	12/31/89	4/30/90
E. I. DuPont DeNemours Co., Inc.	Tank mix stability study (no guideline reference no.)	12/31/89	4/30/90
Rohm & Haas Co.	Tank mix stability study (no guideline reference no.)	12/31/89	4/30/90

IV. Conclusion

EPA has issued the above noted Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 18, 1990.

Connie S. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 90-17476 Filed 7-25-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3813-9]

Notice of Employee Counseling and Assistance Program; Privacy Act; System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Privacy Act of 1974, Notice of New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Environmental Protection Agency (EPA) is proposing to establish and maintain a system of records. This system is the "Employee Counseling and Assistance Program Records EPA/ECAP." These records contain information about employees who seek, are referred to, and/or receive assistance through EPA's Employee Counseling and Assistance Program (ECAP) for personal or work related problems which may affect their job performance.

EFFECTIVE DATE: The EPA is requesting a waiver from the Office of Management and Budget (OMB) of its sixty-day advance review period. If the OMB grants the waiver, this system will become formally operational thirty-days after publication unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be addressed to Headquarters ECAP Coodinator, Employee Counseling and Assistance Program Office (PM–211), U.S. Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Headquarters ECAP Coordinator Employee Counseling and Assistance Program (PM–211), U.S. Environmental Protection Agency, Washington, DC 20460. Tel. (202) 382–4420.

SUPPLEMENTARY INFORMATION: EPA is proposing to establish a Privacy Act system of records, Employee Counseling and Assistance Program Records EPA/ECAP, which will contain information about EPA employees who seek, are referred to, and/or receive counseling or other assistance for personal or work related problems through the Agency's Employee Counseling and Assistance Program (ECAP). The primary objective of ECAP is to promote and maintain the well-being and mental fitness of EPA employees in order to ensure a productive, effective Agency workforce. ECAP offers assistance for a wide range of problems which may adversely affect employee job performance, including alcohol and drug abuse problems and emotional, mental, family and other personal problems.

Employee Counseling and Assistance Programs are authorized by 5 U.S.C. 7901 (which provides authority for the development of health service programs to maintain the general physical and mental health of Federal employees); 42 U.S.C. 290dd–1 and 290ee–1 (which authorize the development of prevention, treatment and rehabilitation programs and services for Federal employees with alcohol and drug problems); and Executive Order 12564 (which requires development of Federal employee drug testing programs and counseling and rehabilitation programs for Federal employees found to use illegal drugs).

The ECAP system of records will contain biographical data on employees who participate in ECAP, information concerning the nature of the employee's problems, documentation of the counseling process, and, in some cases, records concerning job performance.

EPA is aware of the highly sensitive and confidential nature of the information maintained in the ECAP record system. Records are maintained in locked cabinets in rooms protected with door locks. ECAP records do not become part of the employees' official personnel folders. Individuals who are the subject of ECAP files have a right to access records pertaining to themselves in accordance with the procedures set forth below in the system notice and in EPA's Privacy Act regulations, 40 CFR part 16.

Disclosures of ECAP records without the consent of the subject individuals will rarely be made. Disclosures to EPA personnel will be strictly limited to personnel with a bona fide need to know, such as ECAP staff. EPA has published only three routine uses in connection with this system of records. Routine use disclosures of records related to alcohol or drug abuse are limited to disclosure to medical personnel in the case of genuine medical emergency; for research, audit, and program evaluation purposes, provided no information identifiable to an individual is disclosed; and in response to an appropriate court order. Disclosures of records concerning counseling for alcohol or drug abuse is restricted under the confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2. As a matter of EPA policy, ECAP records on individuals which do not pertain to alcohol or drug abuse counseling will, to the extent permitted by law, be afforded the same confidential treatment.

Records of the results of drug tests of EPA employees are not part of the ECAP system of records and will not be located in employees' ECAP counseling files. Drug testing records maintianed by EPA and other Federal agencies on their employees, including such records created under Executive Order 12564, "Drug-free Federal Workplace," are part of the Office of Personnel Management's (OPM) Government-wide system of records, "OPM/GOVT–10, Employee Medical File System Records" (53 FR 2118). Drug testing records, which are maintained in the strictest confidence by EPA, are governed by OPM's system notice and by that Office's Privacy Act regulations (4 CFR part 297).

Note: Where EPA has a negotiated agreement with the U.S. Public Health Service, Department of Health and Human Services, to conduct EPA's counseling program, records created are not covered by this notice.

These records are maintained by the PHS and its Privacy Act system notice applies (see Notice PHS–HHS–HRSA 09–15–0001 at 51 FR 42490).

Dated: May 25, 1990.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

EPA–27

SYSTEM NAME:

Employee Counseling and Assistance Program Records. EPA/ECAP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

EPA employees who seek, are referred to, and/or receive assistance through the Agency Employee Counseling and Assistance Program (ECAP) in connection with personal or work related problems, including, but not limited to, problems related to alcohol and/or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of employees who have been counseled or otherwise assisted in the ECAP office. Information which may be found in this record system includes the employee's name, location within the Agency, sex, age, race, office telephone number, grade, job title and series; problem assessment, recommended treatment, referral source and client status; notes about counseling sessions made by the counselor; copies of admonishments and reprimands received by the employee; copies of performance appraisals received by the employee; copies of performance appraisals; and documentation of treatment from therapists, physicians, rehabilitation treatment centers and other outside private or community resources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1; 42 U.S.C. 290ee–1; 5 U.S.C. 7901; Executive Order 12564.

PURPOSE(S):

The primary use of these records is to counsel EPA employees who are experiencing personal or work related problems, including alcohol and drug abuse problems, which may affect their work performance. The records are used to document the nature of the employee's problem and the progress made, to record an employee's participation in and the results of community or private sector treatment or rehabilitation programs, and, with the employee's consent, to coordinate with appropriate supervisory or management officials concerning the progress of the employee's rehabilitation. These records may also be used for the purpose of conducting scientific research, management and financial audits and program evaluations, but individual employees shall not be identified in any resulting reports, audits, or evaluations nor their identities further disclosed in any manner.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restrictions of 42 U.S.C. 290dd–3 and 290ee–3 and the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2. Accordingly, disclosures of such information, without the consent of the subject individuals, are rarely made and will be limited to the routine use disclosures described below. As a matter of EPA policy, records concerning individuals who are counseled for problems which are not related to drug or alcohol abuse will, to the extent permitted by law, be treated with the same degree of confidentiality as drug and alcohol abuse records.

Information in this system of records may be used:

1. To disclose information to medical personnel to the extent necessary to meet a bona fide medical emergency. Upon disclosure, EPA will notify the individual of the disclosure at his last known address.

2. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluations, provided that no information identifiable to an individual is disclosed.

3. To disclose information if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause, the court shall weight the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any diclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

All records are maintained in paper form in file cabinets.

RETRIEVABILITY:

Records are filed and retrieved alphabetically by the names of the client employees and by client numbers cross-indexed by names.

SAFEGUARDS:

All ECAP records are maintained in files totally separate from the employees' official personnel folders and are located in locked file cabinets in offices protected by door locks. Disclosure of records which pertain to an employee's alcohol or drug abuse is restricted under the provision of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2.

RETENTION AND DISPOSAL:

ECAP Records are retained until three years after termination of counseling or until the individual leaves the EPA and are then destroyed. See GSA General Records Schedule No. 1, Item No. 27a.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: ECAP Program Coordinator Other EPA locations: Servicing Personnel Officers. Addresses are listed in appendix to this notice.

NOTIFICATION PROCEDURES:

Inquiries should be in writing, addressed to the System Manager at the location where the records are maintained. The requester should include his/her full name, date of birth, grade, organization in which employed, name of counselor, approximate date of counseling. The system manager may require additional information including a notarized statement that the requester is the individual to whom the record pertains.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORDS PROCEDURES:

Same as notification procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained directly from the individual, from members of the individual's family, from sources to whom the individual has been referred for assistance, from supervisors and other EPA officials, from the agency health unit and from ECAP counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix

ECAP records are located at the following addresses: For records of EPA employees who are or were counseled in—

a. Washington, D.C.—Employee Counseling and Asssitance Program Coordinator (PM–212), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

b. EPA Region 4—Servicing Personnel Officer, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

c. EPA Region 10—Servicing Personnel Officer, U.S. Environmental Protection Agency, 1200 Sixth Ave., Seattle, WA 98101.

d. Research Triangle Park—Servicing Personnel Officer, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Note: Records of EPA employees who are or were counseled through an EPA negotiated agreement with the U.S. Public Health Service, Department of Health and Human Services (PHS–HHS), are not covered by this notice. These records are maintained by the PHS and their Privacy Act system notice applies (see Notice PHS–HHS–HRSA 09–15–0001 at 51 FR 42490). EPA servicing personnel officers can provide additional information and assistance.

[FR Doc. 90–17474 Filed 7–25–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 88–96]

Information Required To Be Submitted In an Application To Construct and Operate an Air-Ground Telephone Service

AGENCY: Federal Communications Commission.

ACTION: Notice correction.

SUMMARY: This document corrects a notice (55 FR 25879, June 25, 1990), which inadvertently omitted the supplementary information. The following supplementary information is published in its entirety.

DATE: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Information Resources Branch, Information Resources Planning Division, Office of Managing Director, Room 416, 1919 M Street NW., Washington, DC 20554, (202) 632–7513.

SUPPLEMENTARY INFORMATION: In FR Doc. 90–14433, published in the June 25, 1990 Federal Register, on page 25879, the following supplementary information is added:

The following collection of information contained in the final rule published at 55 FR 25840, June 25, 1990, has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Persons

wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number: None.

Title: Section 22.1101, Air-To-Ground Telephone Service (Report and Order, Docket No. 88–96).

Action: New collection.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 10 responses; 3,000 hours total; 300 hours average burden per response.

Needs and Uses: The Commission had determined that an air-to-ground telephone service is technically feasible, attractive to consumers, and a highly-valued use of the available 849–851/894–896 MHz bands. Therefore, we are allocating these bands for an air-to-ground service, and are requiring applicants who wish to operate in the service to demonstrate that they will offer the service in a timely fashion and that they are technically and financially qualified. Information submitted by applicants will be used by the Commission to select licensees for the air-to-ground service. The Commission will require that applications contain complete information on the following areas that will be used for qualifying criteria: (1) Financial qualifications, i.e., resources necessary to construct and operate the system; and (2) technical qualifications, in particular spectrum efficiency. The availability of resources is directly related to the ability of the applicant to establish the service promptly and to maintain it. Use of spectrum-efficient techniques will enhance the availability of this service so that long-term demand, especially during peak periods, can be accommodated with the four megahertz of spectrum that is available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–17497 Filed 7–25–90; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Stuart Gaines Broadcasting Corporation	Gregory, TX	BPH–881027MJ	90–338
B. Gary L. Violet	Gregory, TX	BPH–881027MK	
C. Thomas J. Johnson	Gregory, TX	BPH–881027MG (Dismissed Herein)	
D. Gregory Broadcasting Associates, Inc.	Gregory, TX	BPH–881027MI (Dismissed Herein)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicants
1. Comparative	A, B.
2. Ultimate	A, B.

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90–17498 Filed 7–25–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200290–002.

Title: Port of Oakland/Italia-d'Amico Line Terminal Agreement.

Parties:

Port of Oakland (Port).

Italia-d'Amico Line (User).

Synopsis: The Agreement provides for the expansion of the designation of User's "assigned premises" at the Port's Seventh Street Public Container Terminal to include other Port public container terminals to which User may transfer pursuant to the rights of the User or the Port as set forth in the Agreement.

Agreement No: 224–200394.

Title: City of Los Angeles/Stevedoring Services of America Terminal Agreement.

Parties:

City of Los Angeles (City).

Stevedoring Services of America (SSA).

Synopsis: The Agreement provides for SSA to use three container cranes (numbered 209–13, 18 and 19) at the Port of Los Angeles on a month-to-month basis. The cranes shall be used on a nonexclusive basis for the loading and unloading of containers, goods, wares, merchandise and related materials at Berths 216–225.

Agreement No: 224–200393.

Title: Maryland Port Administration/American Transport Lines, Inc. Terminal Agreement.

Parties:

Maryland Port Administration (MPA).

American Transport Line, Inc. (ATL).

Synopsis: The Agreement provides for MPA to grant ATL a cargo incentive of $3.00 per container and $0.40 per ton for Ro/Ro cargo, restricted to containers and Ro/Ro cargo moving in and out of MPA's marine terminals by direct vessel calls.

By Order of the Federal Maritime Commission.

Dated: July 20, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-17416 Filed 7-25-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003979A-001.

Title: The Puerto Rico Ports Authority/Puerto Rico. Maritime Shipping Authority Terminal Agreement.

Parties: The Puerto Rico Ports Authority (Authority). Puerto Rico Maritime Shipping Authority (PRMSA).

Filing Party: Zulma Perez, Contract Office Coordinator, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.

Synopsis: The Agreement amends the parties' basic agreement to provide for: (1) The Authority to lease to PRMSA Lot JK-2 (Piers J and K) at the Puerto Nuevo Harbor Development area; and, (2) the amendment of Article VII—Fees and Rentals to require PRMSA to pay the Authority an annual ground rental of $31,042.02 monthly.

By Order of the Federal Maritime Commission.

Dated: July 20, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-17417 Filed 7-25-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register, in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-200392.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans (Board).

Coastal Cargo Company, Inc. (Coastal).

Filing Party: Joseph W. Fritz, Jr., Esquire, Staff Attorney, Board of Commissioners of the Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement provides for the lease of certain marine terminal facilities (approximately 88,231 square feet) situated on the Mississippi River, City of New Orleans, Louisiana. Under this lease the Board grants Coastal the right to use the leased premises solely for the purposes of loading and discharging cargo from or to ocean-going vessels, barges or other watercraft; warehousing goods and commodities; stevedoring; and related purposes contributing to the domestic or foreign waterborne commerce of the Port of New Orleans. Coastal shall pay to Board rent at the rate of $5,514 per month for the first year and $5,790 per month for the second year. The term of the Agreement is two years, ending July 14, 1992.

Agreement No: 224-003565-003.

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Terminal Agreement.

Parties:

Puerto Rico Ports Authority.

Sea-Land Service, Inc. (Sea-Land).

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.

Synopsis: The Agreement amends the basic agreement for preferential berthing rights and preferential use of marine facilities at Berths E and F at Puerto Nuevo, San Juan, Puerto Rico, to: (1) Revise the monthly rental payment; (2) revise the insurance policy limit; (3) increase the daily penalty fee for failure to vacate and surrender the premises for any cause specified in Article XII of the basic agreement; (4) revise the provisions for security for payment of rentals and charges; (5) provide the terms and conditions for Sea-Land to purchase and install a new fendering system at Berths E and F; and (6) provide that the rental payment will be revised every 3 years.

Agreement No: 224-200389.

Title: Houston Maritime Freight Handlers Discussion Agreement.

Parties:

Ceres Gulf, Inc.

Fairway Terminal Corporation.

James J. Flanagan Shipping Corp.

Port-Cooper/T. Smith Stevedoring Co.

Ryan-Walsh, Inc.

Shippers Stevedoring Company.

Strachan Shipping Co. of Texas.

Filing Party: Robert Eikel, Esq., 412 San Jacinto Building, 911 Walker Street, Houston, TX 77002.

Synopsis: This proposed Agreement enables the parties, to meet, discuss and agree upon rates, charges rules, regulations, practices, terms and conditions of service for car, truck, and railcar loading and unloading, and other freight handling matters pertaining to the receipt, handling and/or delivery of cargo at public facilities in the Port of Houston and Harris County Texas, and in turn to present recommendations and requests to the owners and operators of

such facilities for inclusion in their tariffs.

By Order of the Federal Maritime Commission.

Dated: July 20, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-17418 Filed 7-25-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004067-007.

Title: Port of Oakland/Stevedoring Services of America Terminal Agreement.

Parties: Port of Oakland (Port) Stevedoring Services of America (SSA).

Synopsis: The Agreement amends the basic agreement to identify certain reimbursement obligations of the Port of SSA for certain extraordinary costs incurred by SSA as a result of relocation of shipping lines from the Seventh Street Public Container Terminal to other facilities following the October 11, 1989 earthquake damage.

Agreement No.: 224-004008-010.

Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.

Parties:

Port of Oakland (Port)

Marine Terminals Corporation (MTC)

Synopsis: The Agreement amends the basic agreement to identify certain reimbursement obligations of the Port to MTC for certain extraordinary costs incurred by MTC resulting from the relocation of shipping lines from the Seventh Street Public Container Terminal to other facilities following the October 11, 1989 earthquake damage.

Dated: July 23, 1990.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-17489 Filed 7-25-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regardng a pending agreement.

Agreement No.: 202-011241-007.

Title: USA-North Europe Rate Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Hapag Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

Synopsis: The proposed modification would revise Article 5.1(j) and Annex C by (1) Including cross-chartering, sub-chartering and/or exchange of space/slots, as well as the coordination of shipping timetables, ports of call, sailing dates or dates of call and frequency of such sailings or calls as may be incidental thereto; (2) deleting reference to the term "casual"; and (3) clarifying the meaning of sections 2(a) and 5 of Annex C.

Agreement No.: 202-011242-008.

Title: North Europe-USA Rate Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Hapag Lloyd AG
Nedlloyd Lijnen BV

Synopsis: The proposed modification would revise Article 5.1(j) and Annex C by (1) Including cross-chartering, sub-chartering and/or exchange of space/slots, as well as the coordination of shipping timetables, ports of call, sailing dates or dates of call and frequency of such sailings or calls as may be incidental thereto; (2) deleting reference to the term "casual"; and (3) clarifying the meaning of sections 2(a) and 5 of Annex C.

Agreement No.: 206-011243-002.

Title: Trans-Atlantic Carrier Association.

Parties:

North Europe-USA Rate Agreement
USA-North Europe Rate Agreement

Synopsis: The proposed modification would provide that a member of a Rate Agreement party to this Agreement may reach agreement and participate with members of the other Rate Agreement party in respect to space/slot chartering and/or equipment exchange/interchange arrangements among or between them in the trade covered by this Agreement.

Agreement No.: 217-011292.

Title: Tecomar/ACL Slot Charter Agreement.

Parties:

Tecomar, S.A.
Atlantic Container Line AB

Synopsis: The proposed Agreement would provide authority for Altantic Container Line AB to charter slots on Vessels operated by Tecomar in the trade between United States Gulf Coast ports and ports on the Gulf Coast of Mexico.

Agreement No.: 207-011293.

Title: NAVCONSA/United Steamship of America Lines, Inc. Joint Service Agreement d/b/a/ The Gran Golfo Express

Parties:

Naviera Consolidada, S.A.
United Steamship of America linces, Inc.

Synopsis: The proposed Agreement would operate a joint service in the trade between ports in Florida and the U.S. Gulf Coast and ports and points in Ecuador, Colombia, Panama, Costa Rica and Mexico.

By Order to the Federal Maritime Commission.

Dated: July 23, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90-17490 Filed 7-25-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BMR Financial Group, Inc.; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. BMR Financial Group, Inc., Atlanta, Georgia; to acquire First Chattanooga Financial Corporation, Chattanooga, Tennessee, and thereby indirectly acquire (1) First Federal Savings and Loan Association of Chattanooga, Chattanooga, Tennessee, and thereby engage in the business of a thrift institution and acting as agent in the sale of credit-related insurance in connection with loans originated by it and its subsidiaries pursuant to §§ 225.25(b)(8)(i) and (b)(9); (2) FMLS, Inc., Chattanooga, Tennessee, and thereby engage in the business of originating, purchasing and selling first and second mortgage loans for its account and for the account of its affiliates and offering mutual funds and other investment securities, pursuant to §§ 225.25 (b)(1) and (b)(15); and (3) Southern Tennessee Mortgage Corporation, Fayetteville, Tennessee, and thereby engage in the business of originating first mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17427 Filed 7-25-90; 8:45 am]

BILLING CODE 6210-01-M

Huxley Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 20, 1990.

A. Federal Reserve Bank of Chicago (Davis S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Huxley Bancorp, Huxley, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Huxley, Iowa.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northeast Bancrop, Inc.*, Summit, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Summit, South Dakota.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. CNB Bancorp, San Francisco, California; to acquire 80 percent of the voting shares of Alvarado Bank, Richmond, California.

Board of Governors of the Federal Reserve System, July 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17428 Filed 7-25-90; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NCNB Corporation, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NCNB America Bank, Newark, Delaware, in acting as agent for insurance that is directly related to an extension of credit by NCNB America Bank and that is limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17429 Filed 7-25-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Acquisition of Office Space in Baltimore County/Baltimore City Maryland for Use as Headquarter Offices of the Health Care Financing Administration

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the siting and acquisition of approximately 664,100 occupiable square feet of office space, with associated parking, for use by up to 3,300 employees of the Health Care Financing Administration's (HCFA) national headquarter offices. Acquisition of this space will allow HCFA to consolidate its offices, which currently are scattered between seven separate leased commercial buildings in the Woodlawn area of Baltimore County, Maryland, and two Government-owned buildings located on the Social Security Administration's Woodlawn Headquarters Complex. Leased warehouse space in Halethorpe, Maryland that is currently used by HCFA, will also comprise part of the proposed consolidation.

The GSA has been authorized by Congress, per Public Law 101–136, to enter into a lease to ownership agreement, pursuant to a competitive selection process, for the lease purchase of a building for use by HCFA, to be erected on a site in Baltimore City or the Woodlawn area of Baltimore County, Maryland. Accordingly, the EIS will analyze and compare the environmental and socio-economic impacts of consolidating HCFA headquarter operations within the specific delineated boundaries of Baltimore County and Baltimore City within which GSA will solicit competitive development offers from the private sector. The delineated area identified by GSA for downtown Baltimore City is bounded by Baltimore Street on the north, Greene Street on the west, Camden to Howard to Conway Streets on the south, and Light and St. Paul Streets on the east. In Baltimore County, GSA has delineated an area lying within one half mile drive of the boundaries beginning at the intersection of Route 70 and Route 695, proceeding north on Route 695 to Route 795 to the Owings Mills Exit and Owings Mills Boulevard, southeast to Lyons Mills Road to McDonogh Road to Liberty Road to Rolling Road and back to Route 70.

Four alternatives are currently identified for the purposes of comparison and evaluation in the EIS. These include three subarea alternatives: (1) That portion of the delineated area of Baltimore County extending north of Liberty Road towards Owings Mills; (2) the remaining portion of the delineated area of Baltimore County extending south of Liberty Road towards HCFA's current Woodlawn location; and (3) the entire delineated area of Baltimore City. The fourth, No Action alternative, meaning no change in the current pattern of office space usage by HCFA, will entail a general overview of current conditions and trends within the Baltimore region, including, to the extent possible, special emphasis on those delineated areas and alternative sub-areas of Baltimore County and Baltimore City as defined above.

The end result of this analysis will be a detailing and comparison of the environmental and socioeconomic impacts of consolidating the HCFA headquarters operations in any of several potential locales or sub-areas within the delineated boundaries of downtown Baltimore and the Woodlawn vicinity of Baltimore County, Maryland. Measures to avoid or mitigate adverse impacts associated with alternative locations will be noted. Probable adverse environmental impacts which cannot be avoided will be discussed along with measures to mitigate those impacts.

The GSA will initiate an early scoping process with local, State, and Federal government officials for the purpose of determining the scope of issues to be addressed in the proposed EIS, and for identifying the significant issues related to this proposed action. To assist GSA in the scoping process, community organizations, groups, and the general public are also invited to provide written comments. The commentator should keep in mind that the proposed EIS at this stage, although designed to analyze three build alternatives and a no build alternative, and to compare the major impacts between alternatives, will nevertheless be area-wide in scope. At a future point in time, once development offers have been received and screened for responsiveness, a subsequent stage of environmental studies and impact assessments will be conducted on site specific locations.

This second stage will also involve public input into the decision-making process, and will refine the analysis of impacts for the purpose of developing site related mitigation measures as required.

To be most helpful, scoping comments at this time should clearly describe specific issues or topics which the commentator believes the area-wide EIS should address. Potential environmental impacts resulting from the proposed action include both short-term impacts during construction (noise, dust, soil erosion), and long term impacts such as changes in traffic, land use, and socioeconomic effects.

A formal public hearing will be held in approximately 3–4 months when the Draft EIS is currently scheduled to be available for comment.

The firm of Woolpert Consultants has been retained to prepare the Draft and Final Environmental Impact Statements.

Written statements and/or questions regarding the scoping process should be mailed no later than August 31, 1990, to Mr. Robert Munson (Code 3PL, telephone 215/597/7859), Region 3, General Services Administration, Nix Federal Building, Rm. 5000, Ninth and Market Streets, Philadelphia, PA 19107.

Dated: July 18, 1990.

Harold Quinn,

Director, Facilities Planning Staff.

[FR Doc. 90-17450 Filed 7-25-90; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF THE INTERIOR

Office of Acquisition and Property Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1084-0023), Washington, DC 20503, telephone (202) 395-7340.

Title: Acquisition-related Collection of Information (Category 3, i.e., those unique to specific solicitations).

OMB approval number: 1084-0023.

Abstract: "Category 3" information collections refer to those collections which are unique to particular procurement and contracting actions. They are not specifically required by statute or regulations on a governmentwide basis (Category 1) or a departmentwide/bureauwide level (Category 2), but are required by the provisions of particular solicitations for offers or bids. Among the requirements in the solicitation phase of a procurement where 10 or more offerors may respond, i.e., "Category 3" collections, a primary example is the requirement of qualifications and performance history statements. These submissions are necessary for the Department to fully evaluate the performance capability of competing offerors.

Bureau form number: None.

Frequency: On occasion, with bid/proposal.

Description of respondents: Prospective contractors responding to solicitation requirements.

Estimated completion time: 2 hours.

Annual responses: 27,000.

Annual burden hours: 54,000.

Department clearance officer: John Strylowski, 202-208-5345.

William A. Clinkscales,

Deputy Director, Office of Acquisition and Property Management.

[FR Doc. 90-17445 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-RF-M

Office of the Secretary

San Joaquin Valley Drainage Program—California

AGENCY: Interior.

ACTION: Notice.

SUMMARY: The Citizens Advisory Committee for the San Joaquin Valley Drainage Program will meet on Monday, August 13, 1990, at the Plum Tree Plaza Inn, 111 East March Lane, Stockton, California, at 10 a.m.

The meeting is open to the public. Persons wishing to address the Committee will be allowed five minutes to present their statement.

The facilities and rooms where the meeting will be held are accessible to the handicapped. Hearing-impaired, visual-impaired, or mobility-impaired persons planning to attend may arrange for special assistance by calling Curtis Smith at 916-978-4911.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda for the meeting may be acquired from:

Edgar A. Imhoff, Program Manager, San Joaquin Valley Drainage Program, 2800 Cottage Way, Room W-2143, Sacramento, California 95825-1898, Phone: 916-978-4983 (FTS 460-4983).

Telephone inquiries may also be made to Carroll Hamon or Robert Horton at 916-978-4982 (FTS 460-4982).

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended to December 12, 1980.

Dated: July 20, 1990.

Edgar A. Imhoff,

Program Manager, San Joaquin Valley Drainage Program.

[FR Doc. 90-17438 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Indian Affairs

Information Collection Submitted to Office of Management and Budget for Review Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076-0069), Washington, DC 20503, telephone 202-395-7340.

Title: Training Progress Report, 25 CFR 27.

OMB approval number: 1076-0069.

Abstract: Individuals participating in the adult vocational training program are required to make satisfactory progress in training. Failure to meet this requirement, due to reasons within the individual's control, may result in termination from the training program.

Bureau form number: BIA-8242.

Frequency: Exception reporting.

Description of respondents: Institutions for vocational training.

Estimated completion time: 5 minutes.

Annual responses: 1,025.

Annual burden hours: 85.

Bureau clearance officer: Gail C. Sheridan, 202-208-2685.

Dated: June 18, 1990.

Ronal Eden,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 90-17431 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-964-4230-15; F-14906-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to MTNT, Limited, for approximately 9,246 acres. The lands involved are in the vicinity of Nikolai, Alaska.

Certain Lands within:

Tps., 27 S., Rs. 23 and 24 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 [(907) 271-5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 27, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Marcia K. Walker,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 90-17459 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-JA-M

[CO-920-00-4120-11; COC51547]

Colorado: Notice of Invitation for Coal Exploration License Application: Cyprus Yampa Valley Coal Corporation

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Cyprus Yampa Valley Coal Corporation, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

Township 5 North, Range 86 West, 6th p.m.

Sec. 20, SE¼NW¼;
Sec. 21, SE¼NE¼, NE¼SE¼;
Sec. 22, NW¼NW¼.
The area described contains approximately 160.00 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC51547 at the BLM Colorado State Office, Public room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice to Intent to Participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the **Federal Register:**

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Charles N. Thompson or Richard Mills, Cyprus Yampa Valley Coal Corporation, 29587 Routt County Rd. No. 27., Oak Creek, Colorado 80467.

Richard D. Tate,

Chief Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 90-17441 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-JB-M

[ID-020-00-4760-02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on August 30, 1990. The meeting will convene at 8:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Bureau of Land Management Riparian Policy; (2) Grazing Management in Riparian Areas; and (3) Follow up on business conducted at the last meeting. A field tour will leave the District Office at 11 p.m. and return at 4 p.m.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 9:30 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed. Individuals wishing to attend the field tour must provide their own sack lunches and transportation.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: August 30, 1990.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald Quinn, Burley District Manager, (208) 678-5514.

Dated: July 18, 1990.

Ted S. Milesnick,

Acting District Manager.

[FR Doc. 90-17435 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-050-4410-10:GPO-332]

Oregon; Prineville District Advisory Council Meeting

July 20, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 23, 1990. The meeting will be in the form of a tour of the Lower Deschutes River. The purpose of the tour will be to discuss the ongoing coordinated river management planning process and the development of a preferred alternative for management of the lower 100 miles of the Deschutes River.

The tour is open to the public and will leave the Prineville BLM District office located at 185 East 4th Street in Prineville at 8 a.m. Anyone wishing to go on the tour must provide their own transportation, food and water.

Dated: July 20, 1990.

Joseph M. Wichman,

Acting District Manager, Prineville District Office.

[FR Doc. 90-17440 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-33-M

[AK-070-00-4230-21; F-87005]

Realty Action; Ten Year Renewable Lease to Interior Region Emergency Medical Services Council, Inc., Livengood, AK

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a ten year renewable lease to Interior Region Emergency Medical Services Council, Inc. at the highway maintenance and stockpile site in Livengood, Alaska. The lease is intended to authorize construction, maintenance and operation of an ambulance garage. An application will only be accepted from Interior Region Emergency Medical Services Council, Inc. who presently provides support to the volunteers providing medical services along the Elliot and Alton Highways..

DATES: Comments and an application must be received by August 27, 1990.

ADDRESSES: Comments and application must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell (907) 474-2336.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, is described as a 60 foot by 70 foot area within:

Lot 4, Sec. 15, T. 8N., R. 5W., Fairbanks Meridian Comments and the application must include a reference to this notice. The lands are selected by the State of Alaska which has given its non-objection to the proposed lease. The lease will be issued subject to mining claim, Discovery Livengood Creek Association, serial number F–61346 and highway maintenance and stockpile site right-of-way F–1314. A category II processing fee of $300.00 must be submitted with the application and a monitoring fee of $75.00 will be due prior to issuance of the lease. Annual rental shall be fair market value as determined by appraisal.

Dated: July 11, 1990.

John R. Barnes,

Acting Kobuk District Manager.

[FR Doc. 90–17401 Filed 7–25–90; 8:45 am]

BILLING CODE 4310–84–JA–M

[AZ–040–00–4212–11; A 23894]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification in Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public lands in Graham County, Arizona have been examined and found suitable for classification for lease or conveyance to the State of Arizona under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The State of Arizona proposes to use the land for the expansion of an existing correctional facility located adjacent to the proposed site.

Gila and Salt River Meridian, Arizona

T. 7 S., R. 27 E.,
Sec. 14, NW¼.
Containing 160.00 acres, more or less.

The land is not required for any federal purpose. Conveyance of this parcel would best serve the public interest. This action is consistent with current BLM land use planning.

When issued, the lease/patent will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Rights-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

3. All minerals shall be reserved to the United States. Such resources will not be subject to exploration, prospecting, mining and removal.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws including the general mining laws and mineral leasing laws. A final determination of this proposed decision will be made upon completion of the environmental analysis.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager at the address given in the Supplementary Information. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective September 24, 1990.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Safford District, 425 E. 4th Street, Safford, Arizona 85546.

Dated: July 17, 1990.

Ray A. Brady,

District Manager.

[FR Doc. 90–17442 Filed 7–25–90; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–00–4212–13; AZA 24634]

Direct Sales of Public Lands in Arizona

AGENCY: Bureau of Land Management (BLM).

REALTY ACTION: Direct Sales of Public Lands, Arizona.

The following public land has been found suitable for disposal by direct sale pursuant to Sec. 203(a) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1713. Minerals, except for oil and gas, will be conveyed per Sec. 209(b) for an administrative fee of $50.00.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 7 N., R. 2 E.,
Sec. 27, lots 50 and 60, 62 to 64, 66 to 68 incl.
Comprising a total of 24.52 acres.

The lots range in size from .76 acre to 1.52 acre and will be offered at the following fair market appraised values to the respective adjacent landowners.

Lots 50, 51	$8,550
Lot 52	$5,400
Lot 53	$6,005
Lots 54, 55, 58, 59	$8,475
Lot 56	$5,885
Lot 60	$1,710
Lot 62	$8,378
Lot 63	$5,814
Lot 64	$5,300
Lots 57, 66, 67, 68	$5,130

Lots 58 and 62 will be offered upon completion of a BLM-approved archaeological survey.

The lots have been created from excess highway right-of-way and will continue to provide legal access to the affected adjacent landowners. Direct sales are justified by the adjoining land ownership pattern.

Patents will be granted under the following terms and conditions:

1. Subject to rights of records as they may affect the respective lots.

Maricopa County Highway Department—Phx 083267
Arizona Public Service Company—AZA 23691
US West Communications—AZA 24543
Southwest Gas Corporation—AZA 24058

2. Reserving a right-of-way theron for ditches and canals constructed by the authority of the United States. Act of August 30, 1890; 26 Stat. 391.

3. Lands in the base floodplain will be subject to Maricopa County floodplain regulations.

In accordance with the regulations of 43 CFR 2711.1–2(a) publication of this Notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or 270 days from the date of publication, whichever occurs first.

Notice of realty action AZA 20346–U is hereby terminated as it affects the lands in this notice.

Detailed information concerning these sales can be obtained from Barbara Ahearn at the Phoenix District Office, (602) 863–4464.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District

Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 18, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-17449 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-00-4212-13; CA-27258, CA-27259, CA-26800]

Realty Action; Exchange of Public and Private Lands; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public and Private Lands, CA-27258, CA-27259 and CA-26800.

SUMMARY: The following described public lands, located in Riverside County, are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

Pushwalla Parcel, CA-27258
T. 4 S., R. 7 E.,
Section 2: Lots 2-13, S½NW¼, N½SW¼, SW¼SW¼.
Containing 551.78 acres, more or less.
Deception Canyon Parcel, CA-27259
T. 3 S., R. 6 E.,
Section 24: Lots 1 and 2, E½, NW¼, N½ SW¼, SE¼SW¼.
T. 3 S., R. 7 E.,
Section 20: Lots 1 and 2, SW¼SW¼;
Section 30: Lots 5-16, N½N½NE¼, N½ NE¼NW¼, SW¼NE¼NW¼, NW¼ SE¼NW¼.
Containing 843.54 acres, more or less.
Chang Parcel, CA-26800
T. 3 S., R. 5 E.;
Section 2: Lots 1-4, S½N½, SE¼.
Containing 479.04 acres, more or less.
The selected public land parcels aggregate 1,874.36 acres, more or less.

In exchange for these lands, the United States will acquire from The Nature Conservancy under an exchange pooling agreement the following offered private land in Riverside County, California, within the Salt Creek Area of Critical Environmental Concern:

San Bernardino Meridian, California

T. 8 S., R. 11 E.,
The westerly 2,214.75 feet of the SW¼ of Section 4, excepting therefrom all oil, gas, petroleum and other hydrocarbon substances and minerals with the right of ingress and egress for the purpose of removing the same as reserved in deed from Ynez Y. Whilton recorded Sept. 20, 1959 in book 2555 page 185 of Official Records of Riverside County, California and;

The west half of fractional Section 3, excepting therefrom that portion described as follows: Beginning at the northeast corner of the west half of said section; thence southerly on the easterly line of the west half of said section, 560 feet; thence westerly parallel with the northerly line of said section, 390 feet; thence northerly, parallel with the easterly line of the west half of said section, 560 feet to a point on the northerly line thereof; thence easterly on the northerly line of said section, 390 feet to the point of beginning. Said property is also shown on record of survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California, and;

The north 560 feet of the east 390 feet of the West ½ of Section 3, and;

The North ½ of Section 9; excepting therefrom the Northeast ¼ of the Northeast ¼ thereof; and also excepting the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of said Section 9, and;

The South ½ of Section 9; excepting therefrom any portion thereof conveyed to Effie Sigrid Nelson by deed recorded March 3, 1959 in Book 2424 Page 206 of Official Records of Riverside County, California, and;

The North ½ of the Northwst ¼ of Section 10. Said property is also shown on the Records of Survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California, and;

The North ½ of Section 14, excepting therefrom any portion thereof lying within the Kaiser Company railroad right of way. Said property is also shown on Record of Survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California.

The offered non-Federal lands aggregate 1,371.8 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands within the Salt Creek Area of Critical Environmental Concern (ACEC). The Salt Creek ACEC contains riparian habitat supporting two Federally listed endangered species, the Yuma Clapper Rail and Desert Pupfish. The Bureau of Land Management has entered into a land exchange pooling agreement with The Nature Conservancy to acquire the offered non-Federal lands through a series of land exchanges to occur within the next two years until the values of the offered and selected lands reach equal fair market value as described by regulation. Additional Notices of Realty Action will be published identifying all specific additional offered and selected lands being considered under the land exchange pooling agreement.

The exchange would create a more logical and efficient land management pattern and would enhance the Bureau of Land Management's goal to acquire private lands within critical wildlife habitat areas for conservation purposes. The public interest will be served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through either acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership at the conclusion of the exchange process.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way:

A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

Lands to be acquired in this pooled exchange will be subject to the following-described encumbrances or reservations:

T. 8 S., R. 11 E., SBM

1. Section 3: W½ and Section 4, easements in favor of Imperial Irrigation District.
2. Section 4: SW¼, easement located within the southerly 60 feet of said land for road purposes in favor of Ynez Y. Whilton.
3. Section 14: N½, easement located within the northerly 15 feet and the easterly 15 feet of said land in favor of Stanley L. Hechinger et al.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this exchange contact Russell L. Kaldenberg, BLM Palm Springs-South Coast Resource Area, at (619)-323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 18, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90-17432 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-00-4212-13; CA-27260]

Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public and Private Lands, CA-27260.

SUMMARY: The following described public lands, located in Riverside County, are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1987 (43 U.S.C. 1716):

San Bernardino Meridian, California

Lewis Valley Parcel, CA-27206

T. 7 S., R. 1 E.,

Section 10: N½N½, SE¼NE¼, SE¼.
Containing 36.0 acres, more or less.

In exchange for these lands, the United States will acquire from The Nature Conservancy under an exchange pooling agreement the following offered private land in Riverside County, California, within the Salt Creek Area of Critical Environmental Concern:

San Bernardino Meridian, California

T. 8 S., R. 11 E.,

The westerly 2,214.75 feet of the SW¼ of Section 4, excepting therefrom all oil gas, petroleum and other hydrocarbon substances and minerals with the right of ingress and egress for the purpose of removing the same as reserved in deed from Ynez Y. Whilton recorded Sept. 20, 1959 in book 2555 page 185 of Official Records of Riverside County, California and;

The west half of fractional Section 3, excepting therefrom that portion described as follows: Beginning at the northeast corner of the west half of said section; thence southerly on the easterly line of the west half of said section, 560 feet; thence westerly parallel with the northerly line of said section, 390 feet; thence northerly, parallel with the easterly line of the west half of said section, 560 feet to a point on the northerly line thereof; thence easterly on the northerly line of said section, 390 feet to the point of beginning. Said property is also shown on record of survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California and;

The North 560 feet of the East 390 feet of the West ½ of Section 3, and;

The North ½ of Section 9; excepting therefrom the Northeast ¼ of the Northeast ¼ thereof; and also excepting the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of said Section 9, and;

The South ½ of Section 9; excepting therefrom any portion thereof conveyed to Effie Sigrid Nelson by deed recorded March 3, 1959 in Book 2424 Page 206 of Official Records of Riverside County, California, and;

The North ½ of the Northwest ¼ of Section 10. Said property is also shown on the Records of Survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California, and;

The North ½ of Section 14, excepting therefrom any portion thereof lying within the Kaiser Company railroad right of way. Said property is also shown on Record of Survey of file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California.

The offered non-Federal lands aggregate 1,371.8 acres, more or less.

FOR FURTHER INFORMATION CONTACT: The purpose of this exchange is to acquire non-Federal lands within the Salt Creek Area of Critical Environmental Concern (ACEC). The Salt Creek ACEC contains riparian habitat supporting two Federally listed endangered species, the Yuma Clapper Rail and Desert Pupfish. The Bureau of Land Management has entered into a land exchange pooling agreement with The Nature Conservancy to acquire the offered non-Federal lands through a series of land exchanges to occur within the next two years until the values of the offered and selected lands reach equal fair market value as described by regulation. Additional Notices of Realty Action will be published identifying all specific additional offered and selected lands being considered under the land exchange pooling agreement.

The exchange would create a more logical and efficient land management pattern and would enhance to Bureau of Land Management's goal to acquire private lands with critical wildlife habitat areas for conservation purposes. The public interest will be served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through either acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership at the conclusion of the exchange process.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way:

A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

Lands to be acquired in this pooled exchange will be subject to the following-described encumbrances or reservations:

T. 8 S., R. 11 E., SBM

1. Section 3: W½ and Section 4, easements in favor of Imperial Irrigation District.

2. Section 4: SW¼, easement located within the southerly 60 feet of said land for road purposes in favor of Ynez Y. Whilton.

3. Section 14: N½, easement located within the northerly 15 feet and the easterly 15 feet of said land is favor of Stanley L. Hechinger et al.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this exchange contact Russell L. Kaldenberg, BLM Palm Springs-South Coast Resource Area, at (619)-323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 18, 1990.

H.W. Riecken,

Acting District Manager

[FR Doc. 90-17433 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-40-M

Land Management Bureau

[ID-010-00-4212-14; IDI-26758]

Realty Action; Ada County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—ID-26758; noncompetitive sale of public lands in Ada County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Boise Meridian, Idaho

T. 1 N., R. 3 E.,
Tracts 37 and 38.
Aggregating 26.30 acres.

DATES: The lands will be available for sale to the State of Idaho, Department of Transportation, between the dates of September 25 and October 29, 1990. If the parcel is not sold during that time, the sale will be cancelled.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land

laws and the mining laws, except for mineral leasing and section 203 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESSES: The sale offering will be held at the Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Realty Specialist, at (208) 334–1582, or at the above address.

SUPPLEMENTARY INFORMATION: The above described lands are being offered to the Department of Transportation by direct noncompetitive bid. This sale will allow the Department of Transportation to construct and operate the East Boise Port of Entry. The subject lands are located along Interstate Highway I–84, at the corner common to sections 11, 12, 13, and 14, of the above township.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. The United States reserves to itself a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 956).

2. Subject to those rights for a buried telephone line granted to Mountain States Telephone and Telegraph Company by the United States, under the authority of the Act of October 21, 1976 (43 U.S.C. 1761); Grant No. IDI–20668).

The offer to purchase will be at the appraised fair market value. A 30% deposit must accompany the offer. An additional $50 nonreturnable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft, or cashier's check addressed to Department of Interior-BLM. The offer will be rejected if accompanied by payment other than as listed above.

The remainder of the full price shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the purchaser and cause the deposit to be forfeited to the BLM.

Objections to this Notice of Realty Action will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

Dated: July 19, 1990.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 90–17437 Filed 7–25–90; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Land Management

(AZ–942–00–4730–12)

Arizona; Filing of Plats of Survey

July 17, 1990.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the Fourth Standard Parallel North on the south boundary of Township 17 North, Range 13 West (north boundary) and a portion of the subdivisional lines, and the survey of the subdivision of section 21, Township 16½ North, Range 13 West, Gila and Salt River Meridian, Arizona, was accepted June 19, 1990 and was officially filed June 22, 1990.

A plat (in 3 sheets) representing the dependent resurvey of portions of the San Ignacio Babocomari Private Land Grant, through Township 20 and 21 South, Range 18 and 19 East, and a metes-and-bounds survey of Parcel A, Gila and Salt River Meridian, Arizona, was accepted June 22, 1990, and was officially filed June 27, 1990.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat (in two sheets) representing a dependent resurvey of the portion of the Fourth Standard Parallel North (north boundary) and a portion of the subdivisional lines; and a survey of the subdivision of Section 10 and metes-and-bounds surveys in section 3 and 10, Township 16 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted March 16, 1990, and was officially filed March 20, 1990.

A supplemental plat was prepared to correct the area shown in lot 1, section 10, Township 16 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted April 4, 1990, and was officially filed April 5, 1990.

These plats were prepared at the request of the Bureau of Land Management, Branch of Lands Operations and Cadastral Survey, respectively.

A plat representing the dependent resurvey of a portion of the West boundary and a portion of the subdivisional lines, and a metes-and-bounds survey of lot 7 (Small Tracts Act Az–1. Apache-Sitgreaves National Forest) in section 31, Township 3 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted June 22, 1990, and was officially filed June 27, 1990.

This plat was prepared at the request of the Apache-Sitgreaves National Forest.

A plat representing the metes-and-bounds survey of Tracts 37 and 38 in Unsurveyed Township 32 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted April 25, 1990, and was officially filed April 26, 1990.

This plat was prepared at the request of the Navajo-Hopi Development Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 90–17399 Filed 7–25–90; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Four Fish, One Insect, and Seven Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Endangered and Threatened Species of Ash Meadows, Nevada. This plan covers the following federally listed species in Ash Meadows, Nevada and California: Devil's Hole pupfish (*Cyprinodon diabolis*), Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*), Ash Meadows speckled dace (*Rhinichytys osculus nevadensis*, Ash Meadows naucroid (*Ambrysus amargosus*), spring-loving centaury (*Centarium namophilum namophilum*), Ash Meadows gumplant (*Grindelia fraxino-pratensis*), Ash Meadows ivesia (*Ivesia eremica*), Ash Meadows blazing star (*Mentzelia leucophylla*), Ash Meadows milk-vetch (*Astragalus*

phoenix), Ash Meadows sunray (*Enceliopsis nudicaulis* var *corrugata*), and Amargosa niterwort (*Nitrophila mohavensis*). These 12 endangered species are endemic to Ash Meadows which is sole habitat for approximately 25 unique plants and animals. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 24, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the Reno Field Station, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada, 89502, or the Portland Regional Office, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232–4181. Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Portland, Oregon address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr. at the above Portland, Oregon address (telephone 503–231–6131 or 8–429–6131).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particualr species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species being considered in this recovery plan are endemic to Ash Meadows which is located in Nye County, Nevada and Inyo County, California approximately 60 miles west of Las Vegas. The principle causes of decline for the Ash Meadows endemics are habitat modifications associated with agriculture, municipal, and mining development, the introduction of non-native animals (largemouth bass, black bass, black mollies, mosquitofish, crayfish, bullfrogs, and turban snails), the invasion of exotic plant species (salt cedar), and grazing and trampling by large herds of wild horses. Recovery efforts for the 12 Ash Meadows endemic species will focus on maintaining and enhancing the existing populations by eliminating the threats from introduced salt cedar, non-native animal species, and wild horses, and reconstruction of natural terrestrial and aquatic habitats degraded by agricultural and mining activities. Most of the habitat is currently under the jurisdiction of the Service as parts of Ash Meadows National Wildlife Refuge.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 20, 1990.

David L. McMullen,

Acting Regional Director.

[FR Doc. 90–17456 Filed 7–25–90; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Environmental Document Prepared for Proposed Research Cruise on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the Availability of Environmental Document Prepared for an OCS Minerals Research Cruise and Study on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following Research Cruise proposed on the Pacific OCS.

Parties

Oregon Placer Minerals Technical Task Force
Oregon Department of Geology and Minerals Industries
Minerals Management Service (DOI)
U.S. Geological Survey (DOI)

Activity	Location	Date
Research cruise to facilitate data collection and analysis for delineation of placer deposits off the Oregon coast.	Cape Blanco area, bounded by 42°46′ to 42°56′ N latitude and 124°34′ to 124°39′ W longitude. Rogue River area, bounded by 42°15′ to 42°39′ N latitude and 124°25′ to 124°38′ W longitude.	9/19/90 to 10/4/90.

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EAs and FONSIs prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Leasing and Environment, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Mail Stop 7300, Los Angeles, California, 90017, Telephone (213) 894–6775.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to research and development of mineral resources on the Pacific OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant affects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: July 17, 1990.

P. Tweedt,

Acting Regional Director.

[FR Doc. 90-17426 Filed 7-25-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-309]

Athletic Shoes With Viewing Windows; Initial Determination Terminating Repondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Reebok International Ltd. and H.S. Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officers' initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 6, 1990.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 4:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW Washington, DC 20436, telephone 202-252-1000. Hearing imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

Issued: July 19, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17461 Filed 7-25-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-294]

Identification of U.S. Advanced-Technology Manufacturing Industries for Monitoring and Possible Comprehensive Study

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation; opportunity for public comment.

EFFECTIVE DATE: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Nelson J. Hogge (202-252-1395), or Aaron H. Chesser (202-252-1380) Machinery and Equipment Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 252-1810.

BACKGROUND: On June 22, 1990, the Commission received a request from the Senate Committee on Finance to expand its collection of, and ability to analyze, information on the competitiveness of advanced-technology manufacturing industries in the United States, pursuant to sections 332(b), 332(d), and 332(g) of the Tariff Act of 1930. In response to that request, the Commission instituted investigation No. 332-294 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), in order that it may (1) Identify for the purpose of monitoring, using criteria provided by the Committee, U.S. advanced-technology manufacturing industries, and (2) recommend to the Committee three of those industries as subjects for comprehensive Commission studies. The Committee asked that the Commission provide its list of industries and recommendation of three for special study within 3 months of receipt of the letter (by September 21, 1990), and that is submit its report on the three industries the subject of comprehensive studies within 12 months or receipt of the Committee's approval (or modification) of the Commission's recommendations.

In its letter the Committee stated that it anticipates a need for impartial and detailed information on the competitiveness of advanced technology manufacturing industries in the United States. It stated that it would be a logical extension of the Commission's responsibility under section 332 of the Tariff Act of 1930 to expand and enhance its capacity to provide information on an ongoing basis concerning the relative global competitiveness of American industry.

In identifying the industries to be monitored, the Committee requested that the Commission consider the following criteria as well as any other criteria it may choose—

(1) Industries producing a product that involves use or development of new or advanced technology, involves high value-added, involves research and development expenditures that, as a percentage of sales, are substantially above the national average, and is excepted to experience above-average growth of demand in both domestic and international markets; and

(2) Benefits in foreign markets from coordinated—though not necessarily sector specific—policies that include, but are not limited to, protection of the home market, tax policies, export promotion policies, antitrust exemptions, regulatory policies, patent and other intellectual property policies, assistance in developing technology and bringing it to market, technical or extension services, performance requirements that mandate either certain levels of investment or exports or transfers of technology in order to gain access to that country's market, and other forms of Government assistance.

The Committee requested that the report on the three industries to be selected include at least the following information—

Existing or proposed foreign government policies that assist or encourage these industries to remain or to become globally competitive, existing or proposed U.S. Government policies that assist or encourage these industries to remain or become globally competitive, and impediments in the U.S. economy that inhibit increased competitiveness of these U.S. industries.

Written Submissions.: No public hearing has been scheduled. However, interested persons may submit written views concerning the industries to be included in the list and which may be the subject of a comprehensive study. To be assured of consideration, all such statements should be received by the Commission at the earliest practical time but not later than August 15, 1990. Commercial or financial information that the submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submission requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for public inspection in the Office of the Secretary to the Commission. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Issued: July 23, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–17460 Filed 7–25–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 338X)]

CSX Transportation, Inc.—Abandonment Exemption—in Hopkins County, Ky

Applicant has filed a notice of exempton under 49 CFR part 1152, Subpart F—*Exempt Abandonments* to abandon its 8.6-mile line of railroad between Colonial Junction and Drake #4 (known as the Magnolia Branch) and also the adjacent joint track, in Hopkins County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the lie can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed. .

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 25, 1990 (unless stayed pending reconsideration). Petitions to stay that do not invovle environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 6, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 15, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Enviroment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 31, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 20, 1990.

By the Commission, David M. Konschnik, Director, Office or Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–17485 Filed 7–25–90; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of ths exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 12, 1990 a proposed consent decree in *United States* v. *Sid Richardson Carbon & Gasoline Co.*, Civil Action No. 90–646–B, was lodged with the United States District Court for the Middle District of Louisiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 113 of the Clean air Act, 42 U.S.C. 7413, and the Louisiana State Implementation Plan ("SIP") at defendant's Addis, Louisiana carbon black plant. The complaint alleged that defendant violated Louisiana Air Quality Regulation section 22.8(a) of the Louisiana SIP by allowing uncontrolled emissions of waste acetylene gas. The complaint sought injunctive relief to require compliance with the Louisiana SIP and civil penalties for past violations.

The consent decree requires defendant to come into compliance with section 22.8(a) by installing a flare system capable of destroying at least 90 percent of the acetylene contained in the waste gas stream. In addition, defendant is required to pay a civil penalty of $77,000 in settlement of claims for past violations, and to dismiss a petition for review now pending in the United States Court of Appeals for the Fifth Circuit of EPA's denial of a SIP revision which would have exempted the Addis plant from section 22.8(a).

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sid*

Richardson Carbon & Gasoline Co., D.J. Ref. 90-5-2-1-1074.

The proposed consent decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 339 Florida Street, Sixth Floor, Baton Rouge, Louisiana 70801 and at the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90-17452 Filed 7-25-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. The Multi-List Service of Cape Girardeau, Missouri, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Missouri in *United States* v. *The Multi-List Service of Cape Girardeau, Missouri, Inc., et al.*

The Complaint of the United States in this case alleges that The Multi-List Service of Cape Girardeau, Missouri, Inc. ("Cape MLS"), nine real estate firms and seventeen individuals employed in the real estate business conspired in violation of section 1 of the Sherman Act (15 U.S.C. 1) to restrain competition in the provision of residential real estate services in Cape Girardeau County and the north half of Scott County, Missouri, and the area adjacent thereto in southern Illinois. The Complaint alleges that the defendants and others excluded from membership in the Cape MLS a real estate firm that offered discount brokerage services in the Cape Girardeau area, agreed among themselves not to provide certain discount real estate services or engage in other potentially competitive conduct, and imposed unreasonable restrictions on membership in the Cape MLS.

The Cape MLS is operated and controlled by the defendant and co-conspirator real estate firms. The Cape MLS operates a computerized listing service and a lock box service, and its members use these services to provide valuable and timely information to prospective home sellers and buyers in the Cape Girardeau area.

All defendants except one individual have stipulated to the entry of a proposed final judgment. The proposed Final Judgment would require the consenting defendants to delete certain Cape MLS bylaws that were used to unreasonably restrict membership in the Cape MLS and limit competition among Cape MLS members. The Final Judgment would also enjoin the consenting defendants from continuing or resuming the conspiracy alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the court. Comments should be directed to Kent Brown, Chief, Midwest Field Office, Antitrust Division, U.S. Department of Justice, Suite 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604 (312/353-7530).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court, Eastern District of Missouri, Southeastern Division

United States of America v. *The Multi-List Service of Cape Girardeau, Missouri, Inc.; Ashland Realty Company; Bridgeport Realtors, Inc.; Owens Realty Company; Century 21 American Real Estate; Capitol Hill Realty, Inc.; Emerald Realtors, Inc. dba Century 21 Key Realty; Town & Country Realty; Wunderlich Realty; Heartland Realty; David Dohrmeyer; Roger Skinner; Fred Eggley; Carl Blanchard; Barbara Travers; Karen Mogelnicky; T. Delores Krauss; Barbara Baker; Betty Lou Ryan; Gerald McElreath; Wesley Wade; Jeanne R. Owens; Herbert L. Annis; Thelma Annis; Carol Moutell; Charles Moutell; Clinton Wunderlich,* Defendants. Civil Action No. S90-95C; Filed: 7/16/90, Judge Limbaugh.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

James F. Rill,
Assistant Attorney General.
Judy Whalley,
John W. Clark,
Kent Brown,
Attorneys, Antitrust Division, U.S. Department of Justice.

James E. Gross,

Attorney, Antitrust Division, U.S. Department of Justice, Room 3820 Kluczynski Federal Bldg., 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-7530.

For the Defendant—the Multi-List Service of Cape Girardeau, Missouri, Inc.:

Karen Mogelnicky,
President.

For The Defendant—Bridgeport Realtors, Inc.:

David Dohrmeyer.

For the Defendant—Owens Realty Company:

Jeanne R. Owens.

For the Defendant—Century 21 American Real Estate:

Wesley R. Wade.

For the Defendant—Capitol Hill Realty, Inc.:

Carole A. Moutell.

For the Defendant—Emerald Realtors, Inc. dba Century 21 Key Realty:

Barbara Travers.

For the Defendant—Town & Country Realty:

Barbara J. Baker.

For the Defendant—Wunderlich Realty.

Clinton Wunderlich.

For the Defendant—Heartland Realty:

Gerald W. McElreath.

David Dohrmeyer,
Roger Skinner,
Fred Eggley,

Carl Blanchard,
Barbara Travers,
Karen Mogelnicky,
Betty Lou Ryan,
Gerald McElreath,
Wesley Wade,
Jeanne R. Owens,
Herbert L. Annis,
Barbara Baker,
Thelma Annis,
Carol Moutell,
Charles Moutell,
Clinton Wunderlich.

United States District Court, Eastern District of Missouri, Southeastern Division

United States of America v. *The Multi-List Service of Cape Girardeau, Missouri, Inc.; Ashland Realty Company; Bridgeport Realtors, Inc.; Owens Realty Company; Century 21 American Real Estate; Capitol Hill Realty, Inc.; Emerald Realtors, Inc. dba Century 21 Key Realty; Town & Country Realty; Wunderlich Realty; Heartland Realty; David Dohrmeyer; Roger Skinner; Fred Eggley; Carl Blanchard; Barbara Travers; Karen Mogelnicky; T. Delores Krauss; Barbara Baker; Betty Lou Ryan; Gerald McElreath; Wesley Wade; Jeanne R. Owens; Herbert L. Annis; Thelma Annis; Carol Moutell; Charles Moutell; Clinton Wunderlich,* Defendants. Civil Action No. S90–95C; Filed: 7/16/90, Judge Limbaugh.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on July 16, 1990, and plaintiff and all defendants (by an authorized representative where applicable) except T. Delores Krauss, having consented [hereinafter the consenting defendants will be referred to as "defendants" or "parties"] to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas the defendants have agreed to be bound by the provisions of the Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants under section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Cape MLS" means the defendant, the Multi-List Service of Cape Girardeau, Missouri, Inc.

(B) "Multiple listing service" or "MLS" shall mean any plan or program to which members of the plan or program submit real property listings for common circulation among members.

(C) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity.

(D) "Real estate agent" shall mean any person licensed by the Missouri Real Estate Commission as a real estate broker or real estate salesperson.

(E) "Reasonable MLS charges" means such fees, dues and other assessments levied on a member of a MLS as will:

(1) for each utilized service, approximate the cost to the MLS of providing that service to the member; and

(2) when combined with fees, dues and assessments collected from all members, allow the MLS to cover all reasonable expenses and to accumulate reasonable reserves.

(F) "Utilized services" means those services and goods provided to a member by a MLS, including but not limited to providing lock boxes, lock box keys, listing books, computer services and the processing of listings.

III

(A) This Final Judgment applies to the defendants and to defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) Each defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

(A) Defendants are hereby ordered to delete from the Cape MLS Bylaws:

(1) Cape MLS Bylaw 3.01 which states:

(1) Application for membership shall be made by a company, corporation or individual actively engaged as the broker-owner of or as a broker-employee, or borker-salesperson, of a real estate brokerage firm or company in Cape Girardeau or North Scott County, Missouri. They shall have been in business in the State of Missouri for a one-year period before filing such application for membership.

(2) Cape MLS Bylaw 3.02 which states:

The application shall be in writing and must be accompanied by a certified check, cashier's check or money order in the sum of $2500.00. Annual dues and assessments shall be determined by the board of directors and many vary from year to year in accordance with the financial condition of the corporation. Dues and assessments shall be determined by a simple majority of the entire board of directors.

(3) Cape MLS Bylaw 3.03 which states:

New applications for membership must also be accompanied by fifteen six-month listings, these to exclude lots and to be within Cape Girardeau County or the North half of Scott County. Listings owned by applicants or any member of the applicant organization will not qualify.

(4) Cape MLS Bylaw 3.04 which states:

Upon receipt of an application for membership, the board shall immediately mail five days before voting upon such application for membership, notice of such application to every member firm, requesting that each present to the board of directors any adverse information bearing upon the professional qualifications of the applicant to become a member. Membership will be allowed by a majority vote of the entire board of directors.

(5) Unnumbered Cape MLS Bylaw 1, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(1) No member of this corporation shall take unfair advantage over other members of this corporation and should conduct his business as to avoid controversies with other members.

(6) Unnumbered Cape MLS Bylaw 2, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(2) A member should conduct his business to eliminate in his community any practice which would be damaging to the public or bring discredit to the real estate profession of the Multi-List Service of Cape Girardeau.

(7) Unnumbered Cape MLS Bylaw 3, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(3) All property listed through the MLS Service must be shown with a licensed real estate agent present with their customer. At no time shall a customer be allowed to negotiate directly with the seller of property listed through the MLS service.

(B) Defendants may enact and enforce new bylaws to replace the Cape MLS bylaws that must be deleted in

accordance with Section IV(A), but defendants must comply with all of the requirements set forth in Section V in the enactment and enforcement of any new bylaw.

Each defendant is hereby enjoined and restrained from directly or indirectly:

(A) Enforcing, or causing or inducing the enforcement of, any Bylaw required to be deleted from the Cape MLS Bylaws in accordance with Section IV(A);

(B) Adopting, maintaining or enforcing, or participating in any way in the adoption, maintenance or enforcement of, any rule, bylaw, regulation, policy or decision of the Cape MLS or any other MLS that, for any of the reasons described in (1)–(5) of this section, would (i) allow membership in the MLS to be denied, suspended or terminated; (ii) allow the imposition of any sanction, fine or other penalty on any member or applicant of the MLS; or (iii) allow the MLS to discriminate among its members in the provision of any service or in the imposition of fees therefor—

(1) The applicant or member has not been in business for a specified period of time;

(2) The applicant or member has not obtained a specified number of listings;

(3) The applicant or member has declined to pay the full amount of any fees, dues, or other assessments that, in the case of an applicant, are greater than the actual cost of processing the application and admitting the applicant into membership in the MLS, or, in the case of a member, are greater than reasonable MLS charges;

(4) The applicant or member has not been approved by or has not otherwise received a favorable vote from any specified number of members of the MLS, its governing board or any other persons;

(5) The applicant or member has provided, offered or advertised any particular rate, service or product or otherwise has engaged in any particular activity in connection with the real estate business that the Missouri Real Estate Commission, any other regulatory authority, or any state or federal court has not specifically ordered the applicant or member to cease;

(C) Associating, affiliating or combining with, or becoming a member or continuing as a member in, any MLS that has any rule, bylaw, regulation, policy or decision that does not comply fully with all of the limitations on rules, bylaws, regulations, policies and decisions set forth in Section V(B);

(D) Participating in any combination, conspiracy, agreement or understanding among two or more real estate agents (not partners, employees, or salespersons of the same corporation or firm) fixing, establishing or maintaining:

(1) any fees, commissions, or other prices to be charged for any real estate service, provided, that agents representing parties to a single transaction may agree on the division of fees or commissions to be paid by the parties to that transaction;

(2) the nature, type, or amount of services to be offered or performed, or not to be offered or performed, by any real estate agent;

(3) any terms or other conditions on which any real estate agent will deal or refuse to deal with any other real estate agent or its customers;

(4) any boycott or refusal to deal with any real estate agent.

VI

Defendant Cape MLS shall notify all present and future members and applicants for membership of the terms of the Final Judgment by providing them with a copy of it. Present members shall be so notified within 30 days of the entry of this Final Judgment. Applicants for membership shall be notified within 30 days of the time of their application for membership.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the applicable defendants at their principal offices, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence and other records and documents in the possession or under the control of the notified defendants, who may have counsel present, regarding any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such notified defendants and without restraint or interference from any of them, to interview officers, employees and agents of such defendants, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the applicable defendants at their principal offices, the notified defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No informatoin or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII

This final Judgment shall remain in effect until 10 years from the date of entry.

IX

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

X

Entry of this Final Judgment is in the public interest.

Entered: _____

UNITED STATES DISTRICT COURT JUDGE

United States District Court, Eastern District of Missouri, Southeastern Division

United States of America **v.** *The Multi-List Service of Cape Girardeau, Missouri, Inc.; Ashland Realty Company; Bridgeport Realtors, Inc.; Owens Realty Company; Century 21 American Real Estate; Capitol Hill Realty, Inc.; Emerald Realtors, Inc. dba Century 21 Key Realty; Town & Country Realty; Wunderlich Realty; Heartland Realty; David Dohrmeyer; Roger Skinner;*

Fred Eggley; Carl Blanchard; Barbara Travers; Karen Mogelnicky; T. Delores Krauss; Barbara Baker; Betty Lou Ryan; Gerald Mcelreath; Wesley Wade; Jeanne R. Owens; Herbert L. Annis; Thelma Annis; Carol Moutell; Charles Moutell; Clinton Wunderlich, Defendants. Civil Action No. S 90-95C; Filed: 7/16/90, Judge Limbaugh.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of all the defendants except T. Delores Krauss in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On July 16, 1990 the United States filed a civil antitrust complaint under section 4 of the Sherman Act, as amended, 15 U.S.C. 4, seeking to enjoin the defendants from engaging in an alleged combination and conspiracy to suppress competition in the supply of real estate brokerage services in Cape Girardeau County and the north half of Scott County, Missouri, and the area adjacent thereto in southern Illinois (hereinafter "Cape Girardeau area"), because the combination and conspiracy is in unreasonable restraint of interstate trade and commerce in violation of section 1 of the Sherman Act (15 U.S.C. 1).

The complaint alleges that the defendants and their co-conspirators agreed:

(1) To deny the benefits of membership in the Multi-List Service of Cape Girardeau, Missouri, Inc. ("Cape MLS") to a real estate firm that offered discount brokerage services in the Cape Girardeau area;

(2) To refrain from providing certain discount brokerage services to prospective home sellers in the Cape Girardeau area;

(3) To impose unreasonable restrictions on membership in the Cape MLS; and

(4) To permit Cape MLS members to deny new membership applications for any reason they chose.

The complaint alleges that the effect of the conspiracy has been to restrain competition in the supply of residential real estate brokerage services in the Cape Girardeau area. The complaint requests that the defendants be enjoined from adopting or enforcing any rule or policy that would unreasonably restrain admission into the Cape MLS or any other multiple listing service, or unreasonably restrict the competitive conduct of the members of the Cape MLS or any other multiple listing service. It also requests that the defendants be enjoined from participating in any combination or conspiracy to fix fees for real estate brokerage services, to limit the brokerage services to be offered or performed by any real estate agent, to specify terms or conditions under which any real estate agent will refuse to deal with any other real estate agent or its customers, or to boycott or refuse to deal with any real estate agent.

The United States and the consenting defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. Entry of the proposed Final Judgment will terminate the action as to the consenting defendants, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed judgment and to punish violations of the proposed Judgment.

II

Events Giving Rise to the Alleged Violation

1. The Cape Girardeau Real Estate Brokerage Business

Cape Girardeau real estate firms and their agents, including the individual and broker defendants in this action, provide brokerage services to facilitate and expedite real estate sales transactions, including residential real estate transactions. These services include publishing information about properties that are being offered for sale, attempting to locate potential buyers; providing suggestions to owners for improving the value and salability of their properties; providing sellers with relocation information and referring them to real estate firms in other geographic areas; locating potential properites for prospective buyers and arranging for prospective buyers to inspect properties; providing prospective buyers with pertinent information about a community such as relative property values, most recent selling prices, schools, parks and recreation facilities, cultural events, fire and police protection, restaurants, shopping, mass transportation, property taxes and real estate practices; apprising potential buyers of possible financing alternatives; assisting in the formation and negotiation of offers, counter offers, and acceptances; and helping to schedule asnd prepare for closings of real estate transactions.

Real estate firms and their agents charge fees or commissions for their brokerage services, which are generally paid by sellers at the closings of real estate transactions. Commissions are usually split between estate firms and agents that enter into agreements with sellers to advertise properties and search for potential buyers ("listing agents") and real estate firms and agents that find the ultimate buyers ("selling agents").

Real estate firms and their agents compete with one another to become listing agents and selling agents. This competition allows property owners to attempt to contract with listing agents that will supply the desired range of brokerage services at the lowest possible fee and for prospective buyers to enlist the assistance of selling agents that are most responsive to their needs.

Qualifications and standards of conduct for individuals who provide or desire to provide real estate brokerage services in the Cape Girardeau area are specified by the states of Missouri (for application in the Missouri portion of the Cape Girardeau area) and Illinois (for application in the Illinois portion of the area). State laws prohibit unlicensed individuals from providing real estate brokerage services. State real estate commissions administer the licensing process and are responsible for ensuring that applicants to whom licenses are granted have fulfilled various specified character, age, education, and experience criteria. The state real estate commissions ar also responsible for enforcing rules that regulate the conduct of individuals who are licensed to provide real estate brokerage services.

The complaint alleges that residential real estate brokerage services constitute a relevant product market. Because of state licensing requirements and for other reasons, real estate firms generally are the only firms capable of offering a full range of residential real estate brokerage services. Home owners and prospective buyers could not obtain comparable substitute brokerage services from other firms in the event of a small but significant nontransitory increase in the fees charged for residential real estate brokerage services.

The complaint alleges that the Cape Girardeau area constitutes a relevant geographic market for the provision of residential real estate brokerage services. Home sellers and buyers in the area use the brokerage services of real estate firms located there. Real estate firms located outside the Cape Girardeau area do not have the time or sufficient knowledge about the Cape

Girardeau area to provide competitive residential real estate brokerage services in the area. Home sellers and buyers in the area would not seek brokerage services from real estate firms located outside the area if the firms in the area implemented a small but significant nontransitory increse in the fees charged for their brokerage services.

2. The Cape MLS

The Cape MLS is a not-for-profit corporation located in Cape Girardeau, Missouri. It is operated by real estate firms and individuals that provide brokerage services in Cape Girardeau County or the north half of Scott County, Missouri, including the other defendants in this action.

The Cape MLS operates a computerized listing service through which its members can quickly and efficiently exchange information about real estate properties in the Cape Girardeau area for which they are seeking buyers. Through the listing services, a Cape MLS member can convey to other members substantial information about the properties that are being offered for sale, including photographs, asking prices, room descriptions and sizes. Every two months, the Cape MLS compiles and distributes to its members a book providing information about each property currently listed with its service. In addition, the Cape MLS semi-annually prepares for its members books providing information about each property that has been listed in its service and sold within the prior six months.

The Cape MLS also provides lockboxes that its members can use to store keys to properties that are being offered for sale. The lockboxes are kept near the entrance of the property and can be opened with master keys issued only to agents of the Cape MLS members. The lockboxes allow Cape MLS members to show properties to prospective buyers without arranging appointments with property owners.

Only Cape MLS members and their employees are entitled to use Cape MLS services. Home sellers and buyers in the Cape Girardeau area have received considerable benefits from these services.

A prospective home seller wants to obtain maximum exposure of his or her property as quickly as possible. This helps to improve the prospect for a rapid sale at a good price. In the Cape Girardeau area, this goal is best satisfied by listing property in the Cape MLS's listing service. No other mechanism exists for quickly conveying comparable information to the largest possible pool of prospective buyers at comparable costs. Many home owners in the Cape Girardeau area will not contract for brokerage services with a real estate firm that is not a Cape MLS member.

Prospective home buyers want a real estate firm to identify properties in which they may be interested and arrange for inspections. A real estate firm that quickly identifies a large number of potentially acceptable properties for a prospective buyer to inspect will significantly increase the prospects for arranging a sale.

Cape MLS members have a significant competitive advantage because they can use the listing service as a screening tool to quickly select potential homes for inspection by prospective buyers. Members can also obtain from the Cape MLS information to advise prospective home sellers and buyers on property values, and can use the Cape MLS's lockbox service to permit inspections of properties at the most convenient times for prospective buyers.

Because of the importance to prospective home sellers and buyers of the services provided by the Cape MLS, real estate firms that are denied access to those services are at a significant competitive disadvantage relative to Cape MLS members. Nonmember real estate firms either could not provide, or would need to spend significantly more time and money to provide, prospective home sellers and buyers with services comparable to those offered by the Cape MLS Members.

Cape MLS members dominate the market for residential real estate brokerage services in the Cape Girardeau area. Cape MLS members employ almost all of the real estate agents in the Cape Girardeau area that receive their principal income from commissions earned on residential real estate sales transctions. Cape MLS members are the listing agents or selling agents in the vast majority of residential real estate transactions in the area, and most residential properties offered for sale in the area are listed in the Cape MLS's listing service.

3. Description of the Alleged Violation

The United States' complaint in this case alleges that the defendants and co-conspirators engaged in a conspiracy that unreasonably restrained competition in the provision of residential real estate brokerage services in the Cape Girardeau area by enacting and enforcing certain Cape MLS bylaws and by excluding from membership in the Cape MLS a real estate firm that offered discount brokerage services to prospective home sellers.

The complaint alleges that the defendants and co-conspirators adopted and enforced various bylaws for the Cape MLS which established unreasonable conditions and procedures for obtaining membership in the Cape MLS and which in practice unreasonably restricted the conduct of Cape MLS members and their employees. These bylaws imposed conditions on applicants for membership in the Cape MLS that were more restrictive than the criteria specified by the state real estate commissions for obtaining a license to provide real estate brokerage services. The bylaws also prohibited Cape MLS members from engaging in conduct that was not unlawful or prohibited by the state real estate commissions. The complaint specifically refers to Cape MLS bylaws 3.01, 3.02, 3.03 and 3.04, and unnumbered bylaws 1, 2 and 3, which were passed at a special Cape MLS board meeting on March 9, 1988.

Bylaw 3.01 required applicants for membership into the Cape MLS to remain in business in Missouri for one year before filing their applications. Bylaws 3.02 required membership applicants to pay a fee ($2500) that significantly exceeded the costs of processing their applications and admitting them to membership. Bylaw 3.03 required membership applicants to submit with their applications fifteen qualifying properties to be listed with the Cape MLS's listing service. Bylaw 3.04 required membership applicants to receive a favorable vote on their applications from a majority of the current Cape MLS members, and allowed current members to vote against applications for any reasons they chose.

Unnumbered bylaw 3 prohibited Cape MLS members from offering discount brokerage services in which property listed with the Cape MLS's listing service could be shown to a prospective buyer without having a real estate agent present. Unnumbered bylaws 1 and 2 prohibited Cape MLS members from engaging in other, unspecified buy lawful and potentially competitive conduct.

On March 9, 1988, the defendants and co-conspirators excluded from membership in the Cape MLS a real estate firm in the Cape Girardeau area that offered discount brokerage services to prospective home sellers. The complaint alleges that there was no legitimate reason for the exclusion, which was accomplished in a vote taken pursuant to Cape MLS bylaw 3.04.

Rather, the purpose of this exclusion was to retaliate against and minimize competition from the firm that offered discount services. At the same time, the defendants and co-conspirators adopted the three unnumbered bylaws discussed above.

III

Explanation of the Proposed Final Judgment

The purpose of the proposed Final Judgment is to enjoin the consenting defendants fron continuing or resuming the alleged conspiracy. In this connection, Sec IV(A) of the Final Judgment requires the consenting defendants to delete the Cape MLS bylaws discussed above. Section IV(B) allows those defendants to enact replacement bylaws that do not unreasonably restrict either membership in the Cape MLS or the competitive conduct of the Cape MLS's members. Section V(A) of the Judgment enjoins the consenting defendants from enforcing the bylaws that are required to be deleted by Section IV(A).

Section V(B) enjoins the consenting defendants from participating in any way in the adoption, maintenance or enforcement of any rule, bylaw, regulation, policy or decision of the Cape MLS or any other multiple listing service that is comparable in competitive effect to the Cape MLS's bylaws that are required to be deleted. Section V(C) enjoins those defendants from affiliating with, or becoming or continuing as a member in, any multiple listing service so that has rule, bylaw, regulation, policy or decision comparable in competitive effect to the Cape MLS's bylaws that are required to be deleted.

Section V(D) enjoins the consenting defendants from participating in any conspiracy to fix, establish or maintain: (1) Fees for real estate brokerage services; (2) the brokerage services to be offered or performed or not to be offered or performed by any real estate agent; (3) any terms or conditions on which any real estate agent will deal or refuse to deal with any other real estate agent or its customers; or (4) any boycott or refusal to deal with any real estate agent.

Section VI(A) requires the Cape MLS to provide copies of the Final Judgment to all present and future members and applicants for membership. Section VIII provides that the Final Judgment will expire 10 years after it is entered.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the consenting defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Kent Brown, Chief, Midwest Office, Antitrust Division, United States Department of Justice, Suite 3820 Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Under section IX of the proposed Judgment the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all the relief as to the consenting defendants necessary to cure the violations alleged in the complaint. The Judgment will enjoin the consenting defendants from continuing or resuming operation of the alleged conspiracy and will also enjoin the specific rules, bylaws and practices that were adopted, enforce, or used in furtherance of the conspiracy. Entry of the Judgment will prevent the consenting defendants from using the Cape MLS or any other multiple listing service as a vehicle to restrain competition in the supply of residential real estate brokerage service.

Because the Judgment provides all of the relief against the consenting defendants that the United States would have sought through a trial, the United States did not seriously consider any alternatives to the Judgment. The case will continue as to the remaining nonconsenting defendant.

VII

Determinative Documents

No documents were determinative in formulating the proposed Judgment, and the United States therefore has not attached any such documents to the Judgment.

Dated:

Respectively submitted,

James E. Cross,

Attorney, Antitrust Division, U.S. Department of Justice, Room 3820 Kluczynski Federal Bldg., 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–7530.

[FR Doc. 90–17400 Filed 7–25–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Special Minimum Wages: Subcommittee on the Employment Relationship; Meeting

A meeting of the Subcommittee on the Employment Relationship of the Advisory Committee on Special Minimum Wages (the Committee) will be held at the Holiday Inn Union Square, 480 Sutter, San Francisco, California. The meeting will be held in

the Sutter I, Conference room at 10 a.m. on Thursday, August 23, 1990, and reconvened on Friday, August 24, 1990, at 9 a.m.

At its last meeting, the Committee recommended the establishment of a subcommittee to review the question of the existence of an employment relationship with respect to individuals with disabilities participating in various evaluation or assessment programs involving placements at work sites in the community. As more and more programs are developed that include short-term, community-based placements for purposes of evaluating or assessing the vocational interests or abilities of individuals with disabilities, it has become more difficult to determine whether such placements create an employment relationship or satisfy existing Department of Labor guidelines that distinguish a trainee from an employee.

It is proposed that the subcommittee review existing guidelines of the Department of Labor with respect to determining the existence of an employment relationship for workers with disabilities participating in programs designed to provide vocational evaluation or assessment. The goal of the subcommittee will be to establish a set of guidelines that:

(1) Provide appropriate labor standards protections for workers with disabilities;

(2) Are clear and provide sufficient guidance that can be applied universally;

(3) Can be flexible enough to permit development and implementation of innovative programs designed to facilitate the assessment and eventual placement of workers with disabilities.

The public is invited to attend this meeting. In particular, anyone interested in presenting testimony to the subcommittee is invited to present such testimony beginning at 1 p.m. on Thursday, August 23. Written data, views, or arguments pertaining to the issue before the subcommittee are invited. Such data, views, or arguments may be forwarded to the Committee Secretariat prior to the meeting or may be presented at the meeting.

Any inquiries concerning the meeting of the subcommittee may be directed to: Howard Ostmann, Secretariat for the Advisory Committee on Special Minimum Wages, U.S. Department of Labor, room S3516, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, telephone number (202) 523-8727. This is not a toll free number.

Signed in Washington, DC, this 13th day of July, 1990.

Samuel D. Walker,

Acting Administrator.

[FR Doc. 90-17471 Filed 7-25-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-7-M]

Bunker Hill Mining Co. (U.S.) Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bunker Hill Mining Company (U.S.) Inc., 834 McKinley Avenue, P.O. Box 29, Kellogg, Idaho 83837-0029, has filed a petition to modify the application of 30 CFR 57.19011 (drum flanges) to its Crescent Mine (I.D. No. 10-00085) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that flanges on drums extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is lesser.

2. While the hoist is in motion and the rope is wrapping on the drum, the angle of the fleet pull on the rope when it reaches its outer edges is always toward the center of the drum. This pulling force will not allow the rope to enter past the flange, even if the rope slackens.

3. This is not an automatic hoist; the rope is always visible to the hoist operator, who sits behind the open drums.

4. The hoist has been in service for 33 years without any incident of the cable overlapping the drum.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 27, 1990. Copies of the petition are available for inspection at that address.

Dated: July 18, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17468 Filed 7-25-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-91-C]

Shamrock Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, Inc., P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.800 (high-voltage circuits; circuit breakers) to its Beech Fork No. 18-19 Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage circuits entering the underground area of any coal mine be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers must be equipped with devices to provide protection against undervoltage grounded phase, short circuit, and overcurrent.

2. The mine is currently using undervoltage release breakers to meet the requirements for undervoltage protection. After each power outage, it is necessary for an employee to travel to each belt drive and reset the low-voltage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use contactors to obtain the required protection.

4. In support of this request, petitioner states that—

(a) Only the conveyor belt starting equipment would be affected by this petition; and

(b) Short-circuit protection would continue to be provided by a circuit breaker with the required interrupting retrips.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 27, 1990. Copies of the petition are available for inspection at that address.

Dated: July 18, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17469 Filed 7-25-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-93-C]

Shamrock Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, Inc., P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Beech Fork No. 18-19 Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment must be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers must be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. The mine is currently using undervoltage release breakers to meet the requirements for undervoltage protection. After each power outage, it is necessary for an employee to travel to each belt drive and reset the low-voltage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use contractors to obtain the required protection.

4. In support of this request, petitioner states that—

(a) Only the conveyor belt starting equipment would be affected by this petition; and

(b) Short-circuit protection would continue to be provided by a circuit breaker with the required interrupting retrips.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 27, 1990. Copies of the petition are available for inspection at that address.

Dated: July 18, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17470 Filed 7-25-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-55]

NASA Advisory Council (NAC) Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES AND TIME: August 14, 1990, 8:30 a.m. to 5:30 p.m. and August 15, 1990, 8:30 a.m. to 3 p.m.

ADDRESSES: 600 Maryland Avenue SW., Suite 300E, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W. P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room, (which is approximately 40 persons including team members and other participants).

Type of meeting: Open.

AGENDA:

August 14, 1990

8:30 a.m.—Chairman's Remarks.
9 a.m.—Program Status.
9 a.m.—Budget.
9 a.m.—Schedule.
9 a.m.—Program Design Review Progress.
10 a.m.—Space Station Science and Applications Advisory.
Subcommittee (SSSAAS) Summer Workshop.
10:30 a.m.—Space Station Freedom Maintenance.
1: p.m.—Task Group on Spacesuits and Automation and Robotics.
3: p.m.—Data Management System.
4:30 p.m.—Discussion.
5:30 p.m.—Adjourn.

August 15, 1990

8:30 a.m.—Task Group on Orbital Debris.
10:30 a.m.—Task Group on Verification.
1 p.m.—Discussion.
3 p.m.—Adjourn.

Dated: July 19, 1990.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 90-17462 Filed 7-25-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 129 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment will add a footnote to Technical Specification (TS) Section 5.3.1, "Fuel Assemblies" to allow operation for Cycles 16 and 17 with the two solid Type 30A stainless steel filler rods in place of two fuel rods. In addition, TS Table 3.3-1a, "Reactor Trip System Instrumentation Response Time," has been revised to reflect a typographical error in which the less than or equal sign was left out for the Power Range Nuclear Flux Response Time Trip.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The

Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 1, 1990 (55 FR 22421). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental asssessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 9, 1990, and supplemented June 8, 1990, (2) Amendment No. 129 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 19th day of July 1990.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17463 Filed 7-25-90; 8:45 am]

BILLING CODE 7540-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 128 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The amendment will remove Technical Specification (TS) Table 4.4-5, "Reactor Vessel Material Surveillance Program—Withdrawal Schedule" and delete the references to Table 4.4-5 in TS sections 4.4.9.1.2 and Bases section, "Low Temperature Overpressure Protection Systems."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 21, 1990 (55 FR 20677). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated February 16, 1990, and supplemented March 29, May 9, and June 6, 1990, (2) Amendment No. 128 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 19th day of July 1990.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17465 Filed 7-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Gulf States Utilities (the licensee) to withdraw its February 2, 1990, application for proposed amendment to Facility Operating License No. NPF-47 for the River Bend Station Unit No. 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would have revised the technical specifications pertaining to the Division I and II diesel generator crankshaft inspection scheduling and surveillance requirements.

The Commission had previously issued a notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 19, 1990 (55 FR 10125). However, by letter dated June 26, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 2, 1990, and the licensee's letter dated June 26, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 18th day of July.

For the Nuclear Regulatory Commission.

Claudia M. Abbate,

Project Engineer, Project Directorate IV-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17464 Filed 7-25-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meetings

Pursuant to the authority of section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the Engineered Barrier System Panel of the Nuclear Waste Technical Review Board (NWTRB) will meet with the Department of Energy (DOE) on August 28-29, 1990, at the Pleasanton Hilton Hotel, Pleasanton, California. During the panel's two-day meeting, several topics

will be discussed that are pertinent to DOE's efforts to develop a repository for waste dispoal.

On Tuesday, August 28, 1990, panel members will be briefed by the DOE and its contractors. During the morning session, presentations will focus on the DOE's strategy for development of packaging for spent nuclear fuel and high-level waste, including alternative packaging approaches, and the DOE's plan to implement the strategy. In the afternoon, representatives from the Lawrence Livermore National Laboratory and the Savannah River Laboratory will present information on topics the DOE views a important in developing waste packaging for defense high-level waste, including: an overview of the characterization and qualification activities for the high-level waste produced by the Defense Waste Processing Facility (DWPF) and West Valley Demonstration Plant (WVDP); and glass dissolution studies in saturated and unsaturated environments.

On Wednesday, August 29, 1990, the DOE will brief the panel members on spent fuel studies. The DOE's presentation will include an overview on current spent fuel studies, including information on the fuel's cladding, and the oxidation and dissolution of spent fuel. The Board and the DOE also will discuss the process by which the DOE gathers data on the charactristics of spent fuel. The meeting will adjourn at 3 p.m.

The meeting will be held in the Gold Room, Pleasanton Hilton Hotel, 7050 Johnson Drive, Pleasanton, California 94566 (415–463–8000), from 8 a.m. to 5 p.m. on Tuesday and from 8 a.m. to 3 p.m. on Wednesday. The public is welcome to attend. Transcripts will be available on laon September 18, 1990, on a first-come, first-served basis from the NWTRB.

The U.S. Congress created the Board in the NWPAA. The Board's purpose is to evaluate the technical and scientific validity of the U.S. DOE's work to characterize proposed sites for the permanent disposal of the nation's commercial spent nuclear fuel and high-level waste. The Board is also to evaluate spent nuclear fuel transportation and packaging activities undertaken by the DOE. In the same law, Congress designated the Yucca Mountain Site in Nevada as the candidate for a repository, subject to extensive studies of its suitability and other conditions.

For further information contact Paula N. Alford, Director, External Affairs, 1100 Wilson Blvd., Suite 910, Arlington, VA 22209 (703–235–4473).

Dated: July 20, 1990.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–17398 Filed 7–25–90; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, August 8, 1990

The meeting will start at 10:30 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DC 20415 (202) 606–1500.

Dated: July 18, 1990.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 90–17404 Filed 7–25–90; 8:45 am]

BILLING CODE 6325–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 144
Thursday, July 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE, BOARD OF GOVERNORS

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 6, 1990, and at 8:30 a.m. on Tuesday, August 7, 1990, in Washington, D.C. The August 6 meeting at which the Board will discuss possible strategies in collective bargaining negotiations, is closed to the public. (See 55 F.R. 29144, July 17, 1990). The August 7 meeting is open to the public and will be held in the Benjamin Franklin Room at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

August 6–1:00 p.m. (Closed)

1. Status Report on Preparations for Collective Bargaining. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group, and Joseph J. Mahon, Jr. Assistant Postmaster General, Labor Relations Department)

Tuesday Session

August 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 9–10, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
5. Capital Investments:
   a. Queens, Nerw York, GMF and VMF—Additional Funding. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and John W. Duchesne, Queens Field Division General Manager/Postmaster)
   b. Philadelphia, Pennsylvania, AMF—Additional Funding. (Mr. Smith and Charles J. James, Philadelphia Field Division General Manager/Postmaster)
   c. Flats Automation Research. (Karen T. Uemoto, Assistant Postmaster General, Technology Resource Department)
6. Tentative Agenda for September 10–11, 1990, meeting in St. Louis, Missouri.

David F. Harris,

Secretary.

Approved:

Stanley F. Mires,

Alternate Certifying Officer.

[FR Doc. 90–17590 Filed 7–24–90; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90–17017.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, July 26, 1990, 10:00 a.m.

Meeting Open to the Public

By direction of the Federal Election Commission, the above-noted meeting is cancelled.

DATE AND TIME: Tuesday, July 31, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 2, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Draft Advisory Opinions
A. 1990–10:
  Carolyn F. Bigda on behalf of the Texas Air Corp. PAC
B. 1990–12:
  Sean Strub
LaRouche Democratic Campaign—Request for Oral Presentation
Status Report on Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90–17560 Filed 7–24–90; 12:14 pm]

BILLING CODE 6715–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Thursday, August 2, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N. W., Washington, D. C. 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTER TO BE DISCUSSED: 1992 Budget.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721.

Sidney L. Strickland, Jr.

Secretary.

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Part II

Environmental Protection Agency

40 CFR Part 86

Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3698-3]

RIN 2060-AC05

Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces new programs for banking and trading of particulate matter and oxides of nitrogen emission credits for gasoline-, diesel- and methanol-powered heavy-duty engines. The banking program is effective beginning with the 1990 model year; the trading program is effective beginning with the 1991 model year. In addition, the existing heavy-duty engine averaging programs for these pollutants, effective for the 1991 model year, have been expanded to make them compatible with the new banking and trading provisions. No changes have been made to the existing emission standards, however an emission ceiling for particulate matter is established for the urban bus engine subclass.

Trading and banking are innovative, voluntary programs that allow manufacturers of heavy-duty engines who reduce emissions below regulatory requirements for a particular model year for a particular engine to offset these reductions against emissions in a later model year or to trade credits for these reductions to other manufacturers of similar engines. The mobile source program already allows manufacturers of heavy-duty engines to average emissions between similar engine families. This final rule expands that concept to allow banking, or averaging over time, and trading, or averaging between manufacturers. The trading of emission credits between manufacturers is of particular benefit to small manufacturers who often may not make enough engine families to benefit from the existing averaging program.

A number of restrictions have been included in the program to ensure that there will be no increase in emissions or other adverse environmental impacts. These include eligibility restrictions, time limits on the life of credits and restrictions on use of credits to averaging sets comprised of similar engine families. In addition, all trading and banking credits are subject to a 20 percent discount as an added assurance that the incentives created by the program will not only have no adverse environmental impact but also provide an environmental benefit.

The programs contained in this final rule will enhance the heavy-duty engine manufacturers' technical compliance efforts and will provide heavy-duty engine manufacturers greater product planning flexibility and the ability to lower costs in meeting the more stringent 1991 and 1994 standards. The discounting of credits and other measures will ensure that the program provides an environmental benefit in reducing overall emissions. They should also serve to promote the development and use of new, advanced, emission control technology and lower-emitting alternative fuels.

EFFECTIVE DATE: This Final Rule is effective on August 27, 1990.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket A-87-03, located at the Air Docket Section, U.S. Environmental Protection Agency, room M-1500, 401 M Street SW., Washington, DC 20460, telephone (202) 382-7548. The docket may be inspected between the hours of 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Johnson, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668-4393.

SUPPLEMENTARY INFORMATION:

Extended Summary

The banking, trading and expanded averaging programs being promulgated in this final rule are summarized briefly below, along with the benefits that are expected to ensue from these programs. Additional detail and the rationale for promulgating these provisions can be found in section II of this document.

Banking will be effective beginning with the 1990 model year. However, as will be discussed in greater detail below, the number of families eligible to generate credits in 1990 will be limited. In order to be eligible, the NO_x/PM certification emission level must be at or below a point which represents 50 percent of the reduction in emissions required by the 1991 (non-urban bus) engine standards, as compared to the 1990 standards. This is to be applied on a pollutant-specific basis, meaning that a given family may be eligible for NO_x, PM or both if its individual NO_x and PM certification levels are halfway or more to the 1991 emission standards compared to the 1990 standards. Alternatively, a manufacturer with 1990 certification levels above these points may qualify if it declares an FEL less than or equal to 0.49 g/BHP-hr for PM emissions and/or 5.7 g/BHP-hr for NO_x emissions, allowing sufficient margin(s) for variability, and holds its engines to the designated FEL(s) for SEA and labeling purposes. In 1991 and later model years, all families will be eligible.

In terms of banking program structure, a combined transition and rolling program is established. The transition program for banking will allow generation of credits during the period when emission standards are changing. For eligible engine families, banking of credits will be allowed in model year 1990 for the 1991 particulate matter and oxides of nitrogen standards. These credits may be used in model years 1991 through 1993. Credits for banking generated in model years 1991 through 1993 may be used in model years 1992 through 1996. However, credits generated in a later model year cannot be used to remedy an earlier-year's noncompliance. In addition, a three-year rolling program will begin in model year 1994, whereby credits generated in any given model year can be withdrawn in the three succeeding model years. There is no ending date for the rolling program. Banked credits can be used in averaging or trading.

The emissions trading program for oxides of nitrogen and particulate matter will allow credit exchanges between manufacturers and will be effective for 1991 and subsequent model years. Expanded averaging will also be effective beginning in the 1991 model year. The latter includes the addition of the urban bus engine subclass into the particulate matter averaging program and provisions to allow some cross-fuel oxides of nitrogen and particulate matter credit exchanges for methanol- and petroleum-fueled engines. The final rule also contains a clarification that the urban bus engine particulate matter standard is intended to apply only to bus engines in the heavy-heavy-duty subclass of diesel-cycle engines.

For both equity and environmental impact reasons, banking, trading and averaging will be limited to within the specified averaging sets which now exist in the averaging program. Cross-fuel credit exchanges between methanol and petroleum-fueled engines will only be permitted between like-combustion cycled engine families of the same averaging set. For reasons set forth in section II below, EPA has decided not to establish the proposed heavy-duty engine subcategory which was designed to allow limited cross-fuel and

combustion cycle NO_x averaging and trading for the larger heavy-duty engines. Averaging and trading can still take place between these heavier engines, within the same combustion cycle. In addition, all credits designated for banking or trading (but not averaging) will be subject to the aforementioned 20 percent discount.

No changes have been made to the existing emission standards or to the emission ceilings for averaging. The latter have been carried over to the banking and trading programs and an emission ceiling of 0.60 grams per brake-horsepower-hour is established for particulate matter trading and averaging for the urban bus engine subclass.

Trading and banking provide an economic incentive to develop and use improved emission technologies. Trading and banking are particularly important during the transition to the more stringent emission standards for particulate matter and nitrogen oxides for 1991 and 1994, which strongly push the limits of emission-control technology for heavy-duty engines. The use of credits extends the time during which the engine must demonstrate compliance with the stricter standards, while still achieving the emission reductions envisioned under the more stringent standards. Conversely, banking provides the incentive to reduce emissions before the time required under the emission standard when this becomes possible for a particular engine, in order to earn credits that can be applied to other engines which have more difficulty in meeting the new requirements.

Furthermore, trading and banking can provide environmental benefits that would not be available without the existence of such programs. First, an immediate added benefit to the environment is made possible by the discounting of credits as provided for in this final rule. All credits earned in the program will be subject to a one-time 20 percent discount. This ensures that there will be a reduction of the overall emission level, which will benefit the environment. The 20 percent discount provides a significant environmental benefit, while not being so substantial that it would discourage the voluntary initiatives and innovation that trading and banking are designed to elicit. Second, these programs provide potential environmental benefits by encouraging the development and use of new and improved emission control technology. These technologies, once identified, may provide the technological basis for revising emission standards. Thus, both the public as well as the manufacturers will benefit from the technological innovations that this program makes possible. The trading and banking programs provide several other environmental benefits through the way credits are determined and through other features as described in section II below.

I. Introduction

The banking, trading and expanded averaging programs contained in this Final Rule represent an extension of the averaging concepts and programs that were established in 1985 for heavy-duty engines (HDEs) (50 FR 10606, March 15, 1985) and were developed based largely on the manufacturer-equity and environmental-impact factors that shaped that program. The interested reader is referred to the May 25, 1989 Notice of Proposed Rulemaking (NPRM) (54 FR 22652) for additional detail on the averaging rule and the background that led to the current rulemaking.

The existing averaging program allows manufacturers to average oxides of nitrogen (NO_x) and particulate matter (PM) emissions from their HDE families, within specified engine classes/subclasses. These restrictions, herein referred to as averaging sets, were constructed to provide the maximum technical flexibility and cost savings consistent with manufacturer equity and environmental impact concerns. The program was initially established for gasoline- and petroleum-fueled diesel engines and later extended to include methanol-fueled engines (54 FR 14426, April 11, 1989).

Within a given manufacturer's product line, averaging allows certification of one or more engine families at levels above the applicable emission standard, provided their increased emissions are offset by those from one or more families certified below the same emission standard, such that the average emissions from all the manufacturer's families (weighted by horsepower and production) are at or below the level of the emission standard. This allows a manufacturer to optimize its emission compliance strategies and minimize compliance costs. The specific mechanism by which this is accomplished is certification of the engine family to a family emission limit (FEL) set by the manufacturer. The FEL may be above or below the emission standard, but not higher than an emission ceiling set by EPA. The FEL essentially replaces the emission standard for certification, assembly-line testing (SEA) and recall purposes.

Since averaging is limited to a given manufacturer's product line, the manufacturer must have two or more engine families within a given averaging set to participate in the program. This could limit the opportunities to share in the benefits for some of the smaller HDE manufacturers. Trading allows all manufacturers to optimize their costs by allowing credit exchanges between manufacturers. A manufacturer could certify an engine to an FEL below the applicable emission standard, thereby generating credits (*i.e.*, the difference between the FEL and the standard, weighted by engine horsepower, useful life and family production). These credits could in turn be sold ("traded") to another manufacturer, allowing production of engines emitting above the emission standard by the second manufacturer. Thus, benefits could be extended to manufacturers who might not otherwise be able to participate in the averaging program.

These programs are structured to guard against environmental detriments and to provide positive environmental benefits. A manufacturer's overall emissions level for all of its families must be at or below the applicable emission standard. Moreover, averaging and trading are only allowed within specified averaging sets (see section III.D) comprised of engines having the same general operating and emissions characteristics to eliminate situations that could lead to localized or more widespread emissions increases. Within the same averaging set, averaging and trading are allowed between like-combustion cycled methanol- and petroleum-fueled engines to act as an incentive for the introduction of clean alternative-fueled engines. Since the emissions from these alternative-fueled engines are normally lower for a given pollutant than their petroleum-fueled counterparts, this provision can provide an additional long-term environmental benefit. Also, the manner in which credit generation and use are calculated for multi-configuration engine families will provide a small emission reduction when these families are involved in averaging, trading, and banking. Finally, the provision for a 20 percent discount on credits that are traded or banked will also provide a clear environmental benefit on top of those mentioned above.

Banking can be viewed as averaging over time. It allows a manufacturer to generate credits and save them for future use in averaging or trading. Banking provides manufacturers a more orderly product planning capability, allowing them to optimize emission control costs and their timing. One of the primary benefits of banking would thus be to ease the transition to more

stringent emission standards by extending the time over which the manufacturer must demonstrate compliance for all of its engine families or by allowing the manufacturer to make partial reductions in emissions levels for a given family over several years. For periods when no changes in emission standards are involved, banking can provide manufacturers additional flexibility, provide insurance against any unforeseen emissions-related problems that may arise, and in general provide a means to enhance the development and introduction of new engine technology.

In terms of environmental benefits, banking programs are subject to the same safeguards as averaging and trading programs (*i.e.*, the averaging set restrictions). Also, credits generated for banking will be subject to the same 20 percent one-time discount discussed above for trading. In addition, banked credits have a limited life to ensure the necessary overlap between credit-generating and credit-using engines in the fleet that is inherent in the averaging and trading programs. Like trading and averaging, banking can also promote the introduction and use of clean alternative-fueled engines. Because of the marketable value of emissions credits generated, banking could also promote the development and earlier introduction of advanced emission control technology, which would provide benefits to the environment sooner than would otherwise occur, as well as benefits to the manufacturer. The development and early introduction of advanced emission-control technology can benefit the environment in two ways. First, the technological advances can serve as the basis for future, more stringent, emissions standards. Second, when the "time value" of benefits, *i.e.*, their present value, is taken into account, benefits realized in the near term are worth more to society than those deferred to a later time. Finally, due to market conditions or other circumstances, there is a possibility that some of the credits generated by a manufacturer could go unused, thereby also providing additional benefit to the environment.

Finally, as it was in the original averaging rule, manufacturer equity was a significant factor in the design of the structure for the expanded averaging, trading, and banking provisions. The averaging set restrictions in the original averaging rule were retained for equity as well as environmental reasons, and the additional provisions introduced in today's rule are expected to have no adverse effects on manufacturer equity. Trading should have positive effects since it extends the benefits of the averaging concepts to smaller manufacturers with more limited product lines. Banking and expanded averaging provide a similar opportunity for manufacturers to benefit in accordance with their product line and capability. Thus, EPA expects no adverse manufacturer equity impacts.

The remainder of this preamble is divided into two main sections. The first is a description of the programs being promulgated, the rationale supporting the approaches selected and a discussion of the statutory and legal issues and response to comments on these issues. The second is a brief summary of the other comments received on the NPRM and EPA's responses. A more detailed document entitled "Summary and Analysis of Comments on the NPRM: Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Matter Emission Credits for Heavy-Duty Engines" can be found in the public docket supporting this rule. This document summarizes in more detail the comments received on the NPRM, EPA's response to the comments, and any resulting changes made to the rule as proposed.

The next section, which describes the program being promulgated, is divided into a number of subsections:

A. Applicability;
B. Definitions;
C. Description of the Banking Program;
D. Trading and Expanded Averaging Provisions;
E. Credit Discounting;
F. Statutory and Legal Issues;
G. Credit Use and Credit Calculation;
H. Certification, Compliance and Enforcement;
I. Liability for Credit Shortfalls;
J. Recordkeeping and Access; and
K. Interaction with Nonconformance Penalties.

II. Description of the Action, Rationale and Legal Issues

EPA has used five general principles to provide guidance in formulating the program contained in this final rule. These principles are the same as those used in formulating the existing averaging program: (1) There should be no adverse air quality impacts, either nationally or locally, (2) there should be no adverse equity or competitive effects, (3) the programs must be workable and practical to implement and enforce, both for EPA and the regulated industry, (4) the programs must be consistent with the Clean Air Act and promote its goals, and (5) the programs should be as flexible as possible within the above constraints in order to maximize economic efficiency and enhance competition. To further the goals of the Clean Air Act, particular attention has been given in this action to ways in which the rule as proposed, and as modified in response to comments, provides an environmental benefit through credit discounting and other measures.

In accordance with these principles, most of the averaging set restrictions and other provisions that were established for the existing averaging program have been carried over to the banking and trading programs. EPA believes this structure provides the necessary safeguards to prevent adverse environmental or individual manufacturer-equity impacts and guards against industry-wide anticompetitive effects, without significantly diminishing the flexibility, cost savings and incentives they offer to the industry. As proposed, to provide additional flexibility to manufacturers and promote the use of clean alternative fuels, existing restrictions have been eased in two areas (from those in the averaging program): (1) Cross-fuel averaging and trading of NO_x and PM emission credits between petroleum- and methanol-fueled engines are allowed within engine combustion cycle and subclass restrictions, and (2) diesel-cycle urban bus engines will be allowed to bank, trade and average PM emission credits within their own subclass (they are currently prohibited from participation in PM averaging, although NO_x averaging is allowed). A major reason for these changes is to promote the use of clean alternative fuels such as methanol in heavy-duty engines. EPA believes this can be accomplished without adverse equity or competitive effects and with salutary environmental effects. These provisions will help to promote the use of advanced emission-control technology and lower-emitting alternative fuels in trucks and urban buses in common highway and city use. The proposed HHDE engine class, comprised of petroleum- and methanol-fueled heavy heavy-duty diesel- and Otto-cycle engines, has not been incorporated for environmental and equity reasons, as noted below under Public Participation and discussed in the Summary and Analysis of Comments.

A. Applicability

This Final Rule applies to HDEs, (*i.e.*, engines intended for use in heavy-duty trucks and buses). HDEs are divided into four primary categories based on

fuel and type of combustion cycle. These are:

HDGE: heavy-duty gasoline-fueled Otto-cycle engines
HDMOE: heavy-duty methanol-fueled Otto-cycle engines
HDDE: heavy-duty petroleum-fueled diesel engines
HDMDE: heavy-duty methanol-fueled diesel engines.

HDDEs and HDMDEs are further divided into Light, Medium, Heavy, and Urban Bus Engine subclasses, based on gross vehicle weight and intended service. These subclasses are defined in 40 CFR part 86, subpart A. The reader is also referred to the NPRM, which contains a detailed discussion of heavy-duty engine background information. The reader should also understand that "HDDE" is used generically in other places in the document to mean both HDDEs and HDMDEs.

B. Definitions

The term "averaging set" will be used here to denote a subcategory of HDEs within which trading and averaging of emissions credits among engine families can take place. Banked credits may be used only by engine families within the averaging set where they were generated.

The "family emissions limit" (FEL) refers to the emission level in grams per brake horsepower-hour (g/BHP-hr) to which an engine family participating in averaging, trading and banking programs is certified. The FEL is set by the manufacturer and may be above or below the applicable emission standard, but in no case above an emission ceiling set by EPA. For engines participating in banking, trading and averaging programs, the FEL replaces the emission standard for certification testing, Selective Enforcement Audit (SEA) testing and recall purposes. To account for variability and in-use concerns, manufacturers normally certify at levels lower than required by the standard or the FEL. This additional reduction in emission levels is known as the design margin.

Other key definitions are already contained in 40 CFR part 86, subpart A, and will not be repeated here.

C. Description of the Banking Program

EPA proposed two alternative banking programs: (1) A 3/2 year (three years for credit generation and two years for withdrawal) transition program centered on the 1991 and 1994 model year NO_x and PM emission standards, and (2) a rolling program with a five-year credit life. The Agency also requested comment on year-by-year depreciation of banked emission credits, to address concerns over possible adverse environmental impacts related to banking.

The Final Rule implements a combined banking program incorporating elements from the proposed transition and rolling programs plus changes in response to comments received and discussions at the public hearing. A transition program is established, effective in the 1990 model year for both the 1991 and 1994 NO_x and PM standards. This is followed by a rolling program.

This transition program has two elements. First, for the 1990 model year, only engine families whose emission levels met the eligibility criteria described below will be eligible to generate credits. Beginning in the 1991 model year, all families will be eligible to generate credits; since all will be new technology. For the 1991 NO_x and PM emission standards, banking of credits is allowed for eligible families during the 1990 model year and withdrawal is allowed during the 1991–93 model years. In response to public comments, credit withdrawal is allowed over three years, rather than the two years proposed. For the 1994 NO_x and PM emission standards, banking will be allowed during the 1991–93 model years and withdrawal during the 1992–96 model years, inclusive. Negative banking is not allowed, *i.e.*, credits generated in a later model year cannot be used to remedy an earlier year's noncompliance.

A three year rolling program is also established beginning in the 1994 model year. Under the provisions of this program, credits generated in any given model year can be withdrawn for three succeeding model years. Credits not used by the end of the third year will be forfeited. Comments in response to the NPRM indicated the regulated industry would generally be opposed to year-by-year credit depreciation, which would have been needed to permit a longer credit life. Therefore, the Final Rule limits credit life to three years to assure an overlap between credit-generating and credit-using engines and thus eliminates, for all practical purposes, any temporary in-use emission increases.

However, for the reasons discussed in Section IIE below, credits generated for banking (as well as trading) will be subject to a one-time discount of 20 percent. Credits designated for banking and used in a subsequent year's trading program will thus be subject to the discount, but not to an additional 20 percent discount in the year of use. Moreover, while credits designated for averaging in the current model year are not subject to this discount, banked credits used in a subsequent model year's averaging program will not have the discount restored.

EPA proposed that banking be available for the 1990 model year, but after consideration to the timing of the rule and the comments received regarding environmental impact, the Agency has decided to implement only a limited banking program for 1990. In order for a family to be eligible to generate credits, all of the family's certified configurations not only must meet the 1990 NO_x/PM emission standards, but must also reflect substantial reductions in emission levels below those standards, as is discussed in more detail later in this document. Two options for eligibility are available. Under the first option, engine families certifying at levels reflecting at least 50 percent of the additional NO_x/PM reductions called for by the 1991 (non-urban bus) standards (*i.e.*, 5.5 g/BHP-hr for NO_x, 0.42 g/BHP hr for PM) will be eligible to generate NO_x/PM credits. Under the second option, engine families whose certification emission levels are above the qualifying levels defined in the first option (but not higher than 0.49 g/BHP-hr for PM or 5.7 g/BHP-hr for NO_x, since FELs cannot be lower than the certification levels) may be eligible if the manufacturer has emission test data to demonstrate to EPA's satisfaction that the certification level(s) of the engine family is(are) not typical of the emissions levels achieved by production engines in that family.

Under this second criterion, the manufacturer must declare FEL(s) for that family no higher than 0.49 g/BHP-hr for PM or 5.7 g/BHP-hr for NO_x, allowing a reasonable design margin for variability, and must hold its engines to the declared FEL(s) for SEA and labeling purposes. The manufacturer must also submit data, *e.g.*, SEA, internal audit data or other emission data of equivalent reliability to show that the FEL(s) can be met with a reasonable design margin for variability (margins of 10–25 percent of the emission standard are typical and expected, based on certification levels and FELs submitted by the manufacturers, available in the docket). If other than SEA data (*e.g.*, internal audit data) are submitted, emission data for at least 5 engines, selected in accordance with statistically valid sampling techniques, must be included. EPA is concerned here that data submitted be representative of all production engines, rather than only best-case engines. Accordingly, criteria similar to those used in the SEA program are being implemented. Under the second option, the declared FEL may

not be numerically lower than the emission data for the highest-emitting engine in the sample. These criteria are to be applied on a pollutant-specific basis, which means that a given family may be eligible to generate credits for NO_x, PM, both or neither, depending on its 1990 certification or audit levels.

The first option is based on the aim to allow eligibility only when an engine family's 1990 NO_x/PM certification level(s) reflect substantial reductions beyond those required by the emission standards. The second option is based on the same principle, but it provides an alternative to the manufacturers for demonstrating that a given engine family has achieved equivalent emission reductions.

The Agency has provided an alternative procedure because banking is being promulgated during the 1990 model year, and many manufacturers have established their certification levels for engines already in production before the issuance of the final rule establishing the eligibility limits. The proposal did not contain these limits. While the Agency believes the limits are appropriate and needed, as indicated in the record, some manufacturers who certified engines somewhat above the NO_x/PM qualifying levels (5.5 NO_x, 0.42 PM) may actually have achieved production engine emission levels which are equal to or better than those achieved by engines certified at the qualifying levels. The emission levels of a certification test engine are intended to represent what the engine design is capable of achieving and are expected to reflect emission levels of production engines. However, due to emissions variability, or perhaps for other reasons, there may be a few cases where an engine family's certification level for NO_x/PM may be higher than that ultimately achieved in production engines. Thus, based on certification levels alone, an engine family may not meet the first criterion, but emission levels of production engines may allow the family to meet more stringent FEL(s), even with a reasonable design margin included for variability. Of course, it could be argued that the manufacturer should then simply recertify the engine family to a level below the qualifying level. However, since the 1990 banking program is being promulgated in the middle of the model year, recertification to gain eligibility would mean loss of credits for previous production in that model year, even though the emission levels were the same.

While EPA recognizes that this situation is possible, it is also expected to be uncommon, and only involve a few engine families. Meeting the aforementioned NO_x/PM FELs with a reasonable design margin (10 to 25 percent of the standard) indicates a need for audit emission data at levels at least as low as the qualifying levels and lower in most cases. In the case of NO_x emissions, the need to provide an adequate design margin in establishing an FEL would make it difficult in practice for any engine families to qualify under the second option. Thus, EPA believes that the second criterion is at least as stringent as the first. Finally, any findings of eligibility under this procedure will be publicly available.

The Agency received a number of comments from the regulated industry requesting that it allow banking to be retroactive to the beginning of the model year in the event the Final Rule was promulgated after the beginning of production for the 1990 model year. The Engine Manufacturers Association/ Motor Vehicle Manufacturers Association (EMA/MVMA) and Detroit Diesel Corporation (DDC) submissions suggested procedures to facilitate their request. EPA has decided to grant this request for eligible engine families, provided the manufacturer agrees to comply with all other provisions of the banking program, as prescribed in 86.090–15.

In allowing banking effective from the beginning of the 1990 model year, EPA will require manufacturers to submit a request to participate in the program within 30 days of the effective date of the final rule, and will require them to hold all production covered by the banking program to the FEL designated in their application. If an SEA is conducted on an engine family before the rule becomes final, then the FEL established for purposes of trading and banking for a given pollutant may be no lower than the highest individual family emission data resulting from the audit for that pollutant.

D. Trading and Expanded Averaging Provisions

The trading and expanded averaging provisions listed below are effective in the 1991 model year for NO_x and PM emissions. Except for the proposed HHDE category, which is not being implemented, averaging sets are as proposed, *i.e.*, essentially the same as the existing sets provided in the current averaging program. A summary of this program is provided below.

First, for manufacturer equity and environmental impact reasons, as described in the NPRM and previously in the NO_x and PM averaging rule (50 FR 10606, March 15, 1985), cross-combustion cycle credit exchanges between Otto- and diesel-cycle engine families will not be permitted. Although some commenters asked for the program to be designed to permit this approach, no solutions were offered which would adequately address the concerns discussed in the NPRM.

Second, as was proposed, averaging and trading of NO_x emission credits will be permitted among all Otto-cycle engine families. There is no need for PM credit exchanges since the PM emission standards do not apply to these engines. There presently are no subclass restrictions for Otto cycle engine NO_x averaging, and no commenter suggested that they were needed. Current HDGEs have very similar operating and use characteristics so no adverse environmental impact is expected from trading and, as was discussed in the NPRM, there is a general lack of manufacturer equity issues in this class. Also, since future HDMOEs will compete with and in some cases replace current HDGEs, they are expected to have operating and use characteristics similar to current HDGEs. Thus, NO_x trading and averaging between HDGEs and HDMOEs would not be expected to have an adverse environmental impact in the future. In fact, such provisions would promote the development and use of lower-emitting alternative-fueled engines, *e.g.*, methanol.

Third, as was proposed, cross-subclass averaging and trading of NO_x and PM emission credits will not be permitted among diesel cycle engines. All credit exchanges are limited to within the specified subclasses (light, medium, or heavy). As was discussed in detail in the NPRM, there are both environmental impact and, from an individual manufacturer's point of view, equity reasons why such restrictions are prudent. And, while several commenters wanted to see the restrictions eliminated, none offered viable solutions to the concerns described in the proposal. In fact, none seriously supported the several possible approaches put forth by EPA in the NPRM. EPA is willing to consider cross-subclass provisions in the future if solutions to the environmental and equity concerns can be found, but cross-subclass averaging and trading must be restricted for the present.

Within subclasses, current HDDEs have similar operating and use characteristics so no adverse environmental impacts are expected, and as was discussed in the NPRM, the prohibitions against cross-subclass averaging and trading should eliminate any of the manufacturer's equity concerns. Also, since future HDMDEs,

will compete with, and in many cases replace, current HDDEs, they are expected to have similar operating and use characteristics. Thus NO_x and PM trading and averaging among HDDEs and HDMDEs within the same subclass would not be expected to have any adverse environmental impact. And, as indicated previously in the discussion of Otto-cycle engines, such allowance should promote the development and use of lower-emitting alternative fueled engines such as methanol.

Fourth, the special heavy-heavy duty engine (HHDE) category proposed in the NPRM will not be finalized. The intent of this provision was to permit a limited amount of cross-cycle (Otto, diesel) NO_x averaging and trading among engine families designed for use in the larger heavy-duty vehicles. While this provision was supported by a few commenters, most echoed and expanded upon the environmental and manufacturer-equity issues and concerns discussed in the NPRM. These engines will be treated the same as their other Otto- and diesel-cycle counterparts.

Finally, with regard to urban bus engines, as was proposed, PM averaging and trading will be permitted. This includes PM credit exchanges between diesel-cycle urban bus engine families using the same fuel (petroleum or methanol) as well as cross-fuel credit exchanges between families using these fuels. For purposes of NO_x averaging and trading, urban bus engine families will be treated as members of the subclass where they would otherwise be specified, based on the criteria in § 86.085–2 regarding primary intended service class. Urban bus engines have extremely similar operating and use characteristics, so allowing averaging and trading is not expected to have adverse environmental impact. Urban bus engine manufacturers wishing to bank credits in 1990 will need to place these configurations in separate families as described in 86.090–24.

Also included in today's action is a change to the definition of urban buses found in § 86.091–2. This change is intended to clarify EPA's intent as to applicability of the urban bus provisions. The current definition has caused confusion among bus manufacturers and others and, if read on a strictly literal basis, can be interpreted in a manner inconsistent with the intent of the urban bus provisions. When the definition was established as part of the standard setting process for 1991 and 1994 diesel particulate standards (50 FR 10606, March 15, 1985), EPA's intent was to establish a stricter standard for those large heavy-duty engines typically used in urban transit buses. A key part of the rationale for the feasibility of the bus standard was the fact that there are relatively few such engine families for which low emission control technologies would need to be developed. Confirming that intent, both EPA's focus and the development work of engine manufacturers related to buses since the promulgation of the bus standard has been exclusively directed at those few large engines used in full-sized transit buses.

Contrary to this purpose, the urban bus definition, if read literally, can be taken to also apply to a myriad of smaller vehicles also serving in urban areas, such as demand-response buses or shuttle buses. However, these vehicles are not intended to be affected by the urban bus provisions. These vehicles also often have characteristics inconsistent with other portions of the urban bus definition. For example, they frequently do not have "more than one set of quick-operating entrance and exit doors" and do not "normally have equipment installed for collection of fares." Thus, EPA believes that some clarification of the urban bus definition is appropriate.

To rectify this question and clarify the intent of the urban bus definition, this Final Rule changes the phrase of the definition stating that an urban bus "means a heavy-duty diesel-powered passenger-carrying vehicle * * *" to read "means a heavy heavy-duty diesel-powered passenger-carrying vehicle * * *" and the useful life provision has been revised to be consistent with this clarification. This change indicates clearly that the urban bus provisions are to apply only to buses powered by heavy heavy-duty diesel (or methanol) engines. This heavy-duty diesel engine subclass includes those engines used in full-sized urban buses, but excludes those buses powered by smaller light or medium heavy-duty diesel engines. With this change, the urban bus provisions are effectively targeted at the desired group of vehicles. Since this change clarifies the meaning of the original rule, and since there is a pressing need for those affected to know the applicability of the standards for 1991, the Agency believes it is in the public interest to make this change as a technical amendment.

The structure of the expanded averaging, trading, and banking programs are summarized in Figures 1 and 2. The averaging sets for NO_x are found in Figure 1; those for PM are shown in Figure 2. In both figures, each type of hatched box represents a different averaging set.

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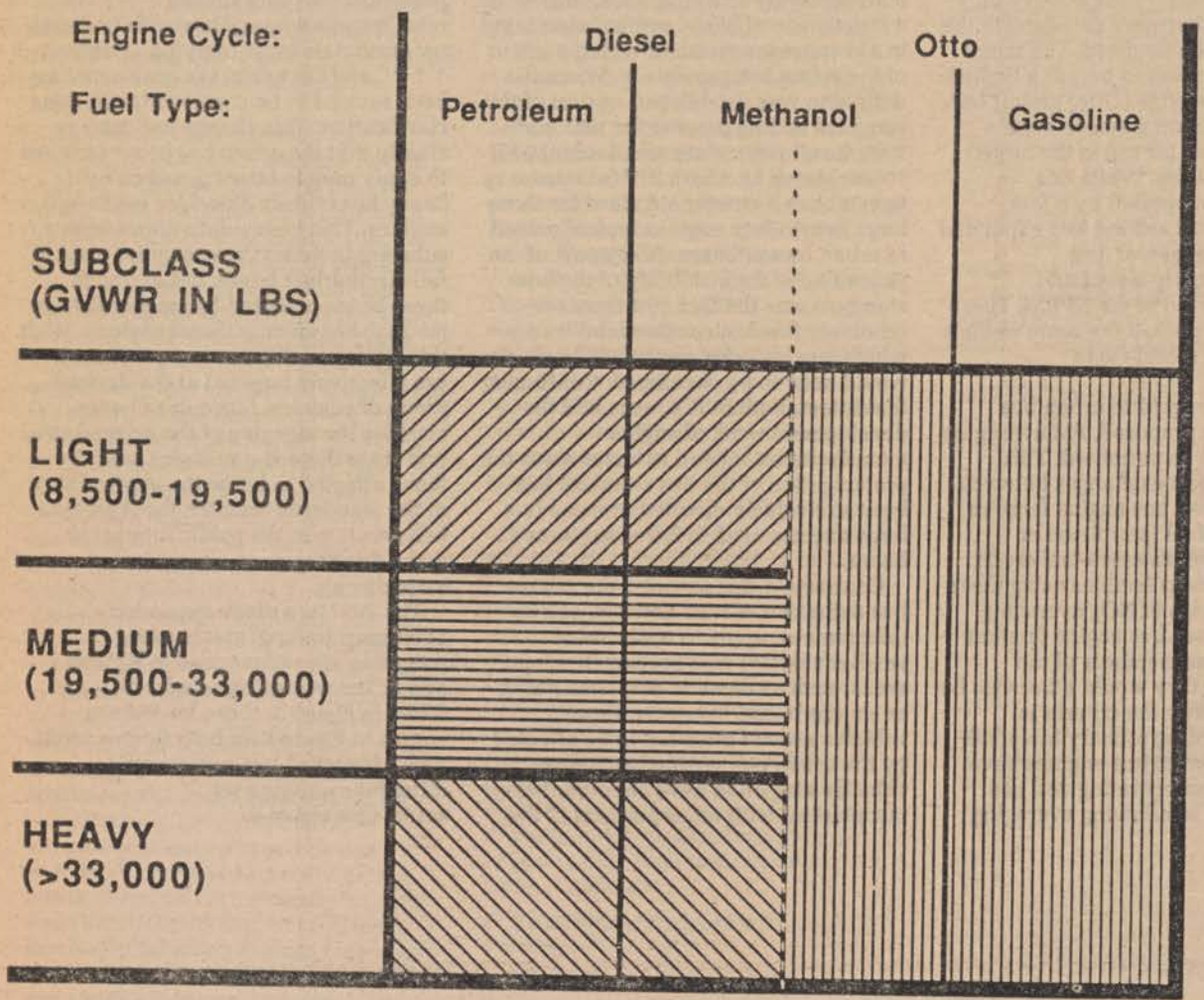
Figure 1

NOX Averaging, Trading, and Banking Restrictions

(Heavy-Duty Engines)

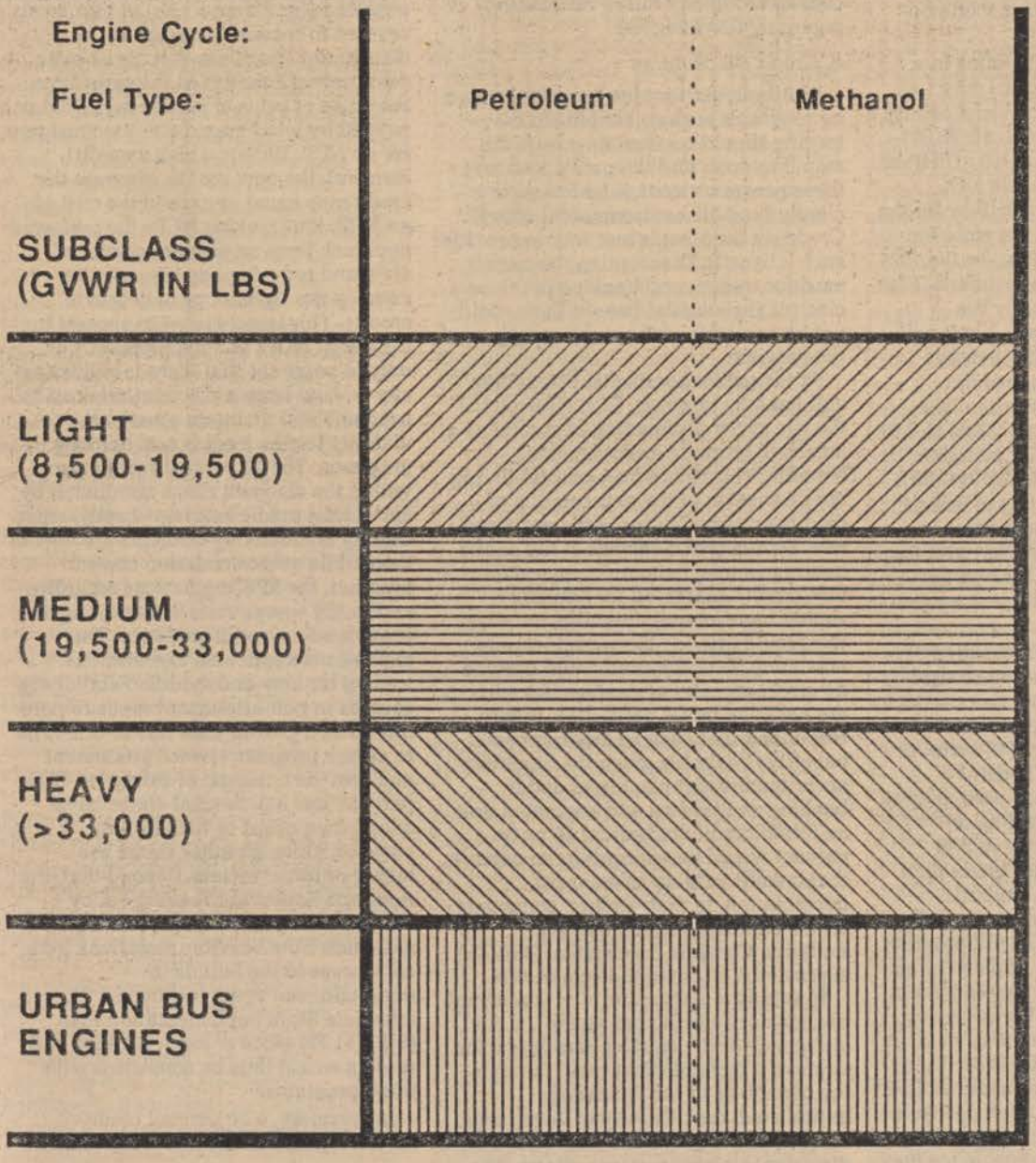


Note: Engine families within a given hatch pattern may average and trade with other engine families within the same pattern.

Figure 2

PM Averaging, Trading, and Banking Restrictions

(Heavy-Duty Diesel Engines)



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As was the case with the banking program, credits generated for trading within a given model year will be subject to a one-time discount of 20 percent. Banked credits withdrawn and used for trading in a subsequent model year will not again be subject to this discount, since they will already have been discounted at that rate when banked. These discounting provisions do not apply to the averaging program; however, banked credits used in a subsequent model year's averaging program will not have the discounted credits restored.

No engine family participating in a trading or averaging program may exceed the applicable emissions ceiling. As is described in §§ 86.091–10, 86.091–11 and 86.094–11, these are 6.0 g/BHP-hr for the Otto- and diesel-cycle NO_x emission standard, 0.60 g/BHP-hr for the 1991 to 1993 diesel-cycle PM emission standard, and 0.25 g/BHP-hr for the 1994 diesel-cycle PM emission standard. The emissions ceiling is normally the previous emission standard, but it will be proposed by EPA if no previous standard exists. In the case of the emissions ceiling for 1991 urban bus engines, the ceiling is established at 0.60 g/BHP-hr, based on the PM emission standard for other HDDEs in 1991. EPA originally proposed a ceiling of 0.25 g/BHP-hr; however, the above value is being finalized for consistency with the upper limit for other HDDEs and the proposed NCP upper limit for the urban bus PM standard.

As was proposed, HDEs certified under the California emission control program are excluded from this program. They may not generate credits for use by Federal engines (49-state) or use credits generated by Federal engines. Fifty-state engines participating in the Federal banking, trading or averaging programs may be sold in California, if their FELs are lower than the applicable emission standard; however, California engines may not generate credits for the Federal program. California may choose to implement an in-state trading and banking program in the future, as now exists for averaging, but this is not included in today's action. Also, as was proposed, HDEs certifying as light duty trucks (LDTs) under 40 CFR part 86, § 86.085–1(b) are excluded from banking, trading and averaging programs. This is appropriate, since they are not subject to the same emission standards as other HDEs, but rather would be meeting the applicable LDT emission standards and could use the NO_x and PM averaging program available for those vehicles.

Finally, although EPA received several comments calling for the extension of averaging, banking and trading to HDEs fueled by compressed natural gas (CNG), the lack of emission standards, test procedures, and other provisions for these engines precludes their inclusion in the programs laid out in this final rule. However, EPA understands clearly the positions and needs expressed by these commenters, and application of banking, trading and averaging to CNG engines will be considered in any future rulemaking regarding CNG engines.

E. Credit Discounting

EPA believes that the benefits created by programs such as banking and trading should be shared by both the manufacturers and the public and that these programs need to be linked to a clearly tangible environmental benefit. Credit discounting is one way to provide such a benefit. Discounting the credits used for trading and banking provides a clear environmental benefit that would not be available without the existence of the program.

At the public hearing on the trading and banking program, EPA referred to the use of the discounting of credits as a means to promote environmental benefits. This reference occurred during the discussion of the depreciation of credits as provided for in the proposed rule. During oral comment at the public hearing, one manufacturer suggested that credits generated for banking should have an unlimited life, because this would provide the manufacturers maximum flexibility and could provide an environmental advantage if credits are held and never used. EPA, in turn, responded that such an environmental benefit is desirable given the flexibility accorded the manufacturers under banking and trading and suggested that an initial credit discount of 10 or 20 percent would be appropriate to capture that benefit with no subsequent depreciation. In their written comments on the NPRM, Manufacturers of Emission Controls Association (MECA) suggested a 50 percent discount rate.

In setting a discount rate, it is relevant to consider such factors as the stringency of the existing standards, the value of a technological breakthrough, the capability of the technology anticipated, the difficulty of developing new technology, and the impact of the discount rate on voluntary efforts. The assessment of these factors requires an exercise of judgment in the particular setting.

EPA has selected a credit discount of 20 percent for several reasons. First, in return for the additional flexibility to bank and trade credits, which in turn provides cost savings and compliance enhancements to the industry, it is reasonable to provide some benefits for the environment. However, it is believed the discount is not so large that it negates the incentive to generate credits for trading and banking. Discounting by any amount reduces the attractiveness of trading and banking programs relative to NCPs. Manufacturers incur a cost for each credit generated and credits must be valued (for internal use) or priced (for external use) at that level or more to recoup costs. Credit discounting increases that break-even point proportionally. At the same time, the value or price of credits is limited or capped by what manufacturers must pay for an NCP. With too high a credit discount, the new cost to generate the credit may equal or exceed the cost of an NCP, thus making NCPs the preferred approach from an economic point of view and reducing any incentive to develop the technology to generate credits. This is not meant to suggest that the use of NCPs is inappropriate, but only to point out that there is a practical cap on how large a discount rate can be used and still maintain practical viability for the trading and banking programs. The 20 percent rate is also within the discount range mentioned by EPA at the public hearing.[1] Lastly, since trading and banking concepts are new to the mobile source emission control program, the EPA regulations regarding stationary source emissions trading may provide some useful guidance. The regulations applicable to emissions trading for new and modified stationary sources in non-attainment areas require offsets at a greater than one-to-one ratio to assure progress toward attainment and provide a margin of safety (40 CFR parts 51 and 52). Several states have adopted an offset of 1.2:1 for this purpose, although other states use higher or lower offsets. Beyond that, the Agency's Emissions Trading Policy statement calls for a 20 percent net reduction from baseline emissions from all sources in the bubble in nonattainment areas lacking an adequate State Implementation Plan (SIP) (51 FR 43814 *et seq.*). Banking and trading would thus be consistent with these programs.

In summary, a 20 percent credit discount provides for a sharing of the

[1] The selection of a 20 percent discount factor for this program does not necessarily indicate that such a value should or will be used in other credit exchange based certification programs EPA may implement in the future. Each would have to be evaluated on its own merits and considering the relevant factors involved.

benefits of these programs between the public and the manufacturer. The 20 percent credit discount provides a clear environmental benefit (*i.e.*, additional tons of emission reductions), just as if the emission standards were more stringent for these engines, while at the same time not being so large as to create a disincentive to participate in these programs, as might be the case with the 50 percent discount suggested by MECA.

For purposes of implementation, this means that all credits generated for banking or credits generated for trading within the same model year will be discounted at 20 percent. This discounting should be considered by the credit generating manufacturers in all initial, quarterly, and end of model year reports, and will be included by EPA when determining compliance for a given engine family. The discount applies to the engine family generating the credits, not the engine family using the credits. Credits designated for averaging are not subject to this discount and banked credits withdrawn for use in a subsequent model year's trading program need not be discounted again. However, banked credits withdrawn for use in a subsequent model year's averaging program will not have the discounted credits restored.

F. Statutory and Legal Issues

The trading and banking programs are fully consistent with the statutory requirements. As explained in detail in the proposed rule, the statutory requirements for HDE NO_x and PM emissions in section 202(a)(3) (ii) and (iii) are technology-forcing. Under CAA section 202(a)(3)(B), the standard for HDE NO_x emissions must be set at the maximum degree of emission reductions most engines can reasonably be expected to achieve within the available lead time of four model years, whenever the level determined by a specific statutory level cannot be met. Under section 202(a)(3)(A)(iii) standards for HDE PM emissions are to take effect as expeditiously as practicable and are to reflect the greatest degree of emission reduction achievable with the technology expected for that model year. The Clean Air Act does not otherwise specify the content of emission standards, nor does it expressly deal with trading and banking. In these circumstances, the Agency's authority depends on whether the program will support the goals of the Act and be consistent with its provisions. The NPRM recognized that given the statute's technology-forcing aspects, banking and trading must not undercut the stringency of the already established emission standards and must promote the achievement of the greatest degree of emissions reductions available now and in the future. The program has been carefully structured to guard against adverse environmental impacts. Also, as the preamble explains in response to comments, the availability of credits does not imply that the emission standards are not sufficiently technology forcing. Rather, it means that credits can still be generated by engines that are technologically advanced and whose emissions performance exceeds what most engines can do, and from innovations that surpass the projections made when the standards were set. Thus, the program is a reasonable and appropriate measure to implement the statutory authority. Discussed below are the comments received with respect to EPA's legal authority and the Agency's response.

A number of commenters agreed with EPA's view that trading and banking programs are consistent with and support the goals and provisions of the Act. These commenters also stated that the findings of the court in *Natural Resources Defense Council* v. *Thomas*, 805 F.2d 410, D.C. Cir, 1986 (*NRDC* v. *Thomas*), regarding emissions averaging for HDEs, supported trading, banking, and expanded averaging since these programs are extensions of the averaging concept. Conversely, several commenters maintained that banking, trading, and expanded averaging were contrary to Congressional intent and that *NRDC* v. *Thomas* was very limited in scope and did not extend to the proposed program. One commenter in particular, the Natural Resources Defense Council (NRDC), went on to state several reasons why these programs are not consistent with the statute (these points cover those raised by other commenters as well). These included the contention that trading and banking contravene the statutory requirement that each heavy-duty engine be certified under § 206 to meet the standards.

This point centered on the observation of the court in the case of *NRDC* v. *Thomas* that emissions averaging may be inconsistent with the requirements in section 206 of the Act which governs certification of vehicles/engines for compliance with emission standards. In that case, the court upheld averaging, but expressed some reservations about averaging in light of a statutory provision and some legislative history not raised by the parties to the case. The court pointed out that under averaging some vehicles would not be required to comply with the standards and that this appeared inconsistent with the requirement that "any," "a" or "such" vehicle or engine be tested and required to comply with emission standards.

At the same time the court noted that the statutory language was ambiguous and that the testing and certification provisions empower the Agency to test vehicles and engines in the manner it "deems appropriate" so as to conform to the prescribed standards. (See section 206(a)(1).)

EPA fully discussed in the preamble to the proposed rule why the statute and its legislative history should be read to allow the Agency discretion to determine the manner of testing and certification of vehicles. EPA also found that the broad type of averaging represented by trading and banking would be consistent with the Congressional scheme. Averaging in such a program did not present the difficulties that led to the criticisms of narrow averaging, *i.e.*, between a small number of prototype vehicles within a single model, found in the legislative history. The analyses of the legislative history indicated that Congress' concern was that the testing of prototype vehicles done at that time period was not sufficient to ensure that production and in-use vehicles were in compliance with the standard. As a result, Congress authorized production-line testing and made the statements found in the legislative history criticizing the type of prototype testing and the type of averaging that had been done.

In its comments, NRDC found EPA's analyses of the legislative history irrelevant because it failed to focus on Congressional concerns in barring averaging in order to lower initial new-car emission rates. Furthermore, NRDC found "no logic" in the distinction made by EPA in analyzing the statute and its legislative history between averaging within model families and averaging between model families. In both cases, according to NRDC, averaging increases the emission levels and is precluded.

EPA continues to believe that the statute provides the Agency discretion in this matter, and that trading and banking are consistent with the statutory aims. Discussed below are EPA's reasons for believing that the emission standard has been set at an appropriate level and does not need to be revised because of this trading and banking program. EPA disagrees with the comment that the legislative history should be read as precluding all forms of averaging in order to lower initial emission rates. The effect on the initial emission rates of averaging, type programs like the one established for

trading and banking can be adequately taken into account in setting the standard or in evaluating the standard in light of the programs. The legislative history instead indicates an underlying Congressional concern with the adequacy of testing to ensure in-use compliance under the Act. Broad averaging of the type represented by trading and banking does not present the compliance problems posed by narrow averaging. Narrow averaging reduces the manufacturer's need to provide a compliance margin for each vehicle, but under the type of broad averaging adopted by the Agency for trading and banking, manufacturers will have to ensure that each engine meets the limit applicable to its family. Thus the manufacturer will need to maintain compliance margins to ensure that each engine is below the limit. Because this type of averaging does not reduce the need for compliance margins it does not pose the risk of increases in emissions found with narrow averaging, as explained further below.

The existing certification program provides for the testing of vehicles in a manner EPA believes appropriate to ensure compliance. Under that program, EPA has promulgated regulations which prescribe how vehicles/engines are to be tested. Engines are grouped into families based on prescribed determinants and each engine family is subject to testing requirements. EPA does not require that every engine, or every model/configuration be tested against the emission standards in order to be certified, but only those within the family believed to represent the worst case for emission purposes (see 40 CFR 86.090–24).

Under trading and banking, every family will be tested as under the current program to evaluate compliance. Compliance will be evaluated against the FEL and without such compliance a certificate will not be granted. Furthermore, if the family's FEL is above the emission standard, then credits from other families tested and certified below their FELs (or NCPs), will be needed to gain a certificate. EPA believes this approach to certification and testing is within the discretion permitted under the Act and provides the same degree of compliance accountability and control as the present requirements implemented under section 206.

Two further arguments raised by the commenter in support of his position on this first point merit a response. In dealing with the legislative history behind the section 206 requirement, the commenter states that it is illogical for EPA to conclude that broad averaging such as is seen under banking, trading and averaging (over time, between manufacturers, between families) is consistent with the Act while at the same time to concede that narrow averaging (among individual engines of the same family) is not consistent. Contrary to the commenter's assertions, there is a significant difference in the two cases. In the broad averaging programs each family and each configuration within the family is held accountable to and must emit below a prescribed level (*i.e.*, the FEL) which has the same effect as the standard. Under narrow averaging, configurations are not necessarily accountable to a given level but would only be required to meet the standard on average. The trading and banking programs respect the Congressional scheme since engine families are certified to FELs and all configurations or engines within that family are accountable to that level. Thus, since there is an identifiable level to which each family can be held, the enforcement provisions of sections 206 and 207 can be implemented. This is not the case under narrow averaging where configurations within a family are not accountable to that level but compliance is based on average performance of the individual configurations, some of which are not even tested under EPA regulatory requirements.

The commenter also asserted that emissions will increase under programs such as banking and trading, since under averaging concepts the average pollution level will rise to the level of the standard itself, while without averaging concepts the average level will be below that allowed by the standards. While EPA agrees that average emissions will be below the standard without averaging, EPA believes that the commenter is incorrect in the conclusion that under the type of averaging employed in trading and banking, emissions will rise to the levels permitted by the standard. In the absence of any type of averaging program, manufacturers certify to the emission standards with a design margin to account for the impacts of variability and in-use concerns. Under averaging, trading or banking, manufacturers certify to FELs, also with design margins to account for variability and in-use concerns. Credit exchanges do not allow engine families to emit at higher levels, because they are still accountable to an FEL which has the same affect as being held accountable to the standard. Margins needed to account for variability and in-use concerns will be required in either case. Thus, emissions will not rise as suggested by the commenter.

NRDC also maintained in its comments that trading and banking was inconsistent with the section 202 standard-setting requirements. According to the comment, that provision requires the largest possible reduction at an acceptable cost and if trading and banking reduces compliance costs, the level of the standards must be reconsidered and appropriately tightened. EPA recognized in the proposal that the standards were set with averaging in mind, making averaging integral to the standard. Similarly, the standards should reflect the cost reductions made possible by trading and banking. According to the comment, since EPA did not evaluate the impact of reduced compliance costs on the level of the standards, trading and banking cannot be adopted until EPA proposes and adopts appropriate revisions in the standards themselves. The commenter also asserted that reconsideration of the standards cannot be made "as an afterthought" in this rulemaking, since a thorough analysis is needed of which PM and NO_x standards reflect the greatest and maximum reductions possible in light of the cost reductions made possible by trading and banking.

EPA continues to believe, as it stated in the preamble to the proposed rule, that the banking and trading program must be consistent with the statutory goal of promoting the achievement of the greatest degree of emission reductions now and in the future. EPA believes that this rule meets this statutory aim and that it is unnecessary to initiate a new proceeding at this time to revise the emission standards to reflect the impact of trading and banking. The impact of trading and banking on the standards has been appropriately evaluated in this proceeding.

Since the 1991 and 1994 standards heavily push technology, the added flexibility provided by trading and banking does not meaningfully change the cost/technology balance used in setting the standards in 1985.

When averaging was implemented for the 1991 and later model year NOx and PM emission standards, it was done as part of the technology-forcing provisions of the Act which require the Administrator to set HDE emission standards at levels which require the greatest degree of emission reductions achievable taking into account cost, fuel consumption, and other factors. The relevant standards are technology-forcing and will require the development

and implementation of new and improved emission control technology, heretofore unused on many HDEs. Averaging was implemented to enhance the technological feasibility and flexibility available to achieve the technology-forcing standards and to mitigate against potential adverse impacts on cost, fuel economy, and other factors.

More than four years have passed since the standards were promulgated, and while progress has been made in developing the technology to meet the standards, EPA's review and discussions with the manufacturers, available in the public docket, indicates that uncertainty clearly remains as to whether all manufacturers will have the means to achieve compliance across their entire product lines in 1991 and 1994.[2] Review of 1990 certification data indicates that only two families are certified below the 1991 standards and that these are probably not certified low enough to account for the needed design margin.

Furthermore, the large number of comments received from manufacturers and users of urban bus engines, who exhorted the Agency to implement this rule as soon as possible (because it is a needed part of the compliance strategy for urban bus engines in 1991), demonstrates the role of these programs in enhancing the technology-forcing provisions of the Act.

Furthermore, it should be noted that even with the compliance enhancements provided by averaging, trading, and banking, it will still be a technological challenge for manufacturers to ensure that all of their HDDE families comply with the 1991 and 1994 PM standards.

In an action supported by both the engine manufacturers and the petroleum industry, EPA recently proposed a diesel fuel sulfur control program which has a number of environmental benefits (54 FR 35276, August 24, 1989). The final rule resulting from that action is expected shortly before or after promulgation of this rule.

The sulfur proposal, which would help manufacturers in achieving compliance with the PM standards in a more cost effective manner, has two basic components. For the 1991 to 1993 model years, the sulfur level of diesel certification fuel would be reduced to 0.10 weight percent to reflect the average in-use values for those engines over their useful life. However, in-use sulfur levels would not be controlled until 1994, at which time both certification and in-use sulfur levels would be controlled at 0.05 weight percent. Since certification and in-use sulfur levels would not coincide until 1994, 1991 to 1993 engine families would not be able to implement catalytic aftertreatment technology to generate credits and would benefit only to the degree that sulfur control directly reduces PM emissions. In most cases this benefit is expected to be used to assist manufacturers in meeting the PM design targets and account for variability. The only exception would be those few families which might be able to meet the PM design target without fuel sulfur control, and thus would gain credits. However, at this time EPA knows of no families in this situation, and few are expected. Thus, in this setting, if manufacturers can achieve further emission reductions, they are expected to reflect technological innovations beyond those anticipated to be needed for compliance.

The 1991 and 1994 HDE NOx and PM emission standards are technology forcing and programs such as trading and banking will complement the averaging program and enhance the technology-forcing provisions of the Act. However, in the near term, these programs do not provide a means to reduce the emission standards further. The 1991 and 1994 standards are very stringent and all effort will be needed to derive the maximum reductions using the technologies now being developed, to meet the standards now in place. Trading and banking will help to enhance those efforts. While some credits will be available, the excess reductions achieved will not be large enough, even if they could be averaged out, to allow an across-the-board reduction in the emission standards.

Based on the current state of technology development, EPA cannot assume that enough credits would be generated to reduce the standards, or that these credits would be equally available to all manufacturers in all subclasses. Furthermore, like averaging, these programs are voluntary. And, while an individual manufacturer has some control over whether it will use averaging and even banking as part of its control strategy, EPA cannot force manufacturers to trade credits. Thus, the role of trading in forcing lower standards is unclear. Nevertheless, absent trading, a limited-line manufacturer cannot benefit from averaging concepts, so trading is needed to complement averaging simply as a matter of equity. While it was not promulgated as part of the HDE averaging rule, the role of trading was recognized in the rule and the Agency stated it would follow-up with further study. With regard to banking, it normally provides a means to make a more orderly transition to the more stringent standards. Any available credits will be used shortly after the new standards must be met. However, if manufacturers are able to continue to bank credits after the new standards are effective then there is strong evidence of the need for a future reduction in the standards.

Trading and banking also provide an incentive, especially in the long run, for more significant innovations which may have greater benefits. The expectation is that the incentives created by trading and banking will lead to technological developments beyond those presently foreseen by EPA, even given the aim of forcing the technology in setting the standard. Because EPA cannot estimate what those innovations might be, it is difficult to estimate as an isolated matter what benefits they might produce, and they do not provide a basis to revise the standard to reflect their specific effect on the overall standard.

The proposed rule contained the estimate of cost and economic savings that trading would permit using 1991 emission standards, these being about $8 million per year, which compares with the $123 million per year expected from averaging alone (54 FR 22654). While the estimate did not include savings from banking, the preliminary estimate stated that the model provided a general idea of benefits that can be obtained from both programs. As the proposal thus made clear, the cost benefits from this program in the immediate future was projected to be limited both in its own terms and in relation to averaging.

EPA recognizes that there are difficulties in projecting the economic impact for trading and banking where innovative technology is involved. Moreover, estimates are affected by technological changes, regulatory developments and the impact of new standards in transitional years. As the proposal suggested, trap oxidizers are not expected to be used in 1991. However, other technological changes will be needed in 1991 and aftertreatment technology is expected to be needed to meet the 1994 PM standard. The reduction of the sulfur content of diesel fuel will help in meeting compliance with the 1991 standard for new engines and will also reduce PM emissions generally for in-

[2] See for example the APTA petition dated February 16, 1989 and other comments available in the public docket and the manufacturers' comments on EPA's recent proposal to control diesel fuel sulfur levels 54 FR 35276, August 24, 1989 available in public docket A-88-03.

use vehicles beginning in 1994. Even if the impact of trading and banking is greater than originally projected, it should be recognized that trading and banking helps provide an added assurance that the standards can be met. The impact must also be considered in relationship to averaging and the cost of the standards. Also apart from the cost impact, these credits will be discounted.

EPA believes that the discounting of credits included in this Final Rule provides an independent assurance that the benefits made possible by trading and banking are adequately reflected in lower overall emissions. The discounting of the credits by 20 percent has the effect of lowering the overall emissions that must be achieved by those who voluntarily use credits. Thus it achieves indirectly an adjustment of the standard to reflect the efficiencies made possible by the program. EPA has explained elsewhere its basis for establishing the 20 percent discount. That discount is aimed at achieving an environmental benefit, while not being so large as to be a disincentive to participate in this program voluntarily, and at encouraging technological innovation in areas where it is particularly needed. The discounting of credits thus ensures that trading and banking provides an environmental benefit as compared with what would occur in the absence of the program.

Revising the standard, as sought in the comment, to incorporate the benefits from trading and banking would significantly delay the implementation of the program, since considerable time is required to propose and issue rules and since NO_x emission standards do not become effective for four years after promulgation. Such an action would preclude the use of trading and banking during the transition to the more stringent 1991 and 1994 standards when the program is particularly needed, and furthermore, as discussed above, the magnitude of the benefits and the general nature of the trading and banking programs do not suggest that an across the boards reduction in the NO_x and/or PM emission standards would be possible.

In summary, the 1991 and 1994 emission standards are as stringent as possible based on the technology EPA sees being developed and projected to be available. While programs such as trading and banking will enhance compliance with the technology-forcing standards, it is not expected that these programs will in the near term lead to technology breakthroughs or provide additional emission reductions that allow a reduction in the standards. And, while trading and banking will reduce costs, if fully used, they are voluntary and cannot be viewed as meaningfully changing the cost/technology balance used in setting the standards. Nevertheless, this does not diminish one of the key benefits of trading and banking. They create an incentive to develop and implement improved or advanced emission control technology which may in the future serve as the basis for a more stringent standard. While some may view this potential benefit as speculative, it must be recognized that these programs provide some incentive where essentially none exists today.

The comments from NRDC also asserted that trading and banking will cause an additional increase in emissions. This is said to be caused by the conversion of any extra emission reductions, beyond those needed to comply with the standards and to account for variability and in-use concerns (design margins), into credits for banking and trading. Because of this, NRDC objected to the use of banking to ease the transition when more stringent standards come into effect. The commenter also states that manufacturers may shave the design margins to generate credits and take the risks inherent in failure of an EPA enforcement action. Finally, the commenter argued that EPA's suggestion that trading and banking may lead to the development of new technology which would serve as the basis of new standards is highly speculative and that there is no evidence of this occurring in the past for either mobile or stationary sources.

In response, by their very nature, some (but not all) emission control techniques provide reductions as a step function rather than in a smooth or gradual manner. This occurs sometimes because of the nature of the technology itself and sometimes because the technology or emission control strategy is applied to engines of slightly different design and emission characteristics and has different effects on emission rates. In the past this resulted in emission reductions which could be viewed as disproportionate, since the emission levels achieved were below those required to meet the emission standards and the emission rates were not "fine tuned" for each engine family. Fine tuning was not viewed as critical by the manufacturers because the emission standards and emission rates were not such that they had large impacts on engine performance parameters such as horsepower, fuel consumption, driveability, and emission interactions. Also, use of computerized controls, which facilitate such fine tuning, was not widespread. However, as emission standards become more stringent, the ability to gain large step-type reductions is reduced, if not eliminated, since gaining emission reductions becomes more technologically difficult and costly, and fine tuning will be more important. In fact, the 1991 and 1994 HDE NO_x and PM standards are at such low levels, that manufacturers are effectively precluded from achieving emission levels significantly below the standard using current or foreseeable technology.

The impact of the stringency of the standards on extra reductions is demonstrated by a comparison between 1989 and 1990 NO_x certification levels for HDDEs. In 1989 the NO_x emission standard was 10.7 g/BHP-hr and the average certification level was 7.0 g/BHP-hr, 3.7 g/BHP-hr belowthe standard. Preliminary, although largely complete, 1990 certification to the 6.0 g/BHP-hr NO_x standard indicated an average certification level of 5.3 g/BHP-hr, only 0.7 g/BHP-hr below the substantially more stringent standard. Similar results are expected when the NO_x standard drops to 5.0 g/BHP-hr in 1991, and the PM standard drops to 0.25 g/BHP-hr in 1991 and 0.10 g/BHP-hr in 1994. In fact, the three HDDE families which have certified below the 1991 PM emission standards in 1990 have extremely small margins as compared to those seen in engines meeting the less stringent standards. The average PM margin for these engines is only 0.02 g/BHP-hr.

While the commenter dismisses the role and value of fine tuning of engine calibrations as a factor mitigating against large extra reductions, EPA cannot agree. In the past, emission standards may not have been demanding enough to heavily stress some of the key operating parameters for the engines involved. However, as standards become more stringent and achieving reductions becomes more difficult, this puts more pressure on some of the key factors impacting engine operation. These include rated horsepower, torque, fuel consumption, driveability, and emission interaction. Many of these factors affect the commercial viability of an engine in comparison to its competitors. Moreover, increasing use of electroniccontrols facilitates such fine tuning in many cases. Thus, manufacturers will have every reason to minimize adverse impacts in these areas when possible.

The forthcoming HDE NO_x and PM standards are quite stringent, and the manufacturers are unlikely to "fall into" levels well below the standards due to large step reductions in emissions. In cases where this may occur, the likelihood of fine tuning of the engine's calibrations cannot be ignored. EPA expects that credits generated for banking and trading will be as the result of a manufacturer's effort to pull ahead, develop, or apply technology not otherwise required for compliance.

The second overall concern raised by the commenter in this area is that manufacturers will shave design margins to generate credits and incur enforcement risks. In the past manufacturers have in most cases incorporated a design margin into their compliance strategies to account for production line, engine-to-engine, and test-to-test variability. In some cases manufacturers have also identified the desirability of a small margin to reduce in-use compliance risks. It is these margins that the commenter thinks may be shaved for conversion to credits and could thus cause an increase in emissions.

Quite simply, EPA believes that manufacturers are unlikely to shave design margins and that they realize that any benefits of doing so are outweighed by the risks. On the first point, many manufacturers will be striving just to achieve compliance with the standards, and the needed design margins will be hard to achieve. Manufacturing experience indicates that many items contributing to the need for a design margin cannot be controlled by the manufacturers through some other means, and while steps such as quality control may be taken to minimize items such as variability, the manufacturers will need to retain what little margins can be developed for these other items. In fact, in some situations the availability of credits could actually deter manufacturers having compliance problems from shaving design margins on their higher-emitting engines in order to meet standards, since they could purchase credits instead. Design margin practices will thus likely be the same with or without trading and banking.

In the NPRM, EPA's analysis indicated that any small incentive to shave design cushions brought about by banking and trading would be mitigated against by the risks involved in failing an EPA enforcement action. As part of the HDE emissions certification program, EPA has 20 years of experience and data which provide a historical basis for comparing certification levels against emission standards. This reference base provides an excellent tool for identifying future situations where the compliance margin is less than normally achieved. This general approach for identifying potential problems is now used in the HDE SEA program and will continue in future programs as a means to identify engine families whose design margins might be reduced to generate credits.

Furthermore, EPA's ability to identify these situations is supplemented by past EPA studies on design margins which were conducted as part of past HDE standards setting rulemakings. These are in turn supplemented by the manufacturers' views on the size of design margins, since they provided comment on the NPRM analyses. Examples may be found in public dockets A–81–11 and A–81–20, associated with the 1983 LDT/HDE HC/CO standards (48 FR 1406, January 12, 1983 and 48 FR 52170, November 16, 1983) and in public docket A–80–18, associated with the 1985 HDE NO_x/PM standards (50 FR 10606, March 15, 1985). EPA believes that these tools provide an excellent means of identifying engine families which may be shaving design margins and thus will deter that practice.

Of course, it must be recognized that the Agency's enforcement resources are limited and it could be argued that some manufacturers may be tempted to game the system. However, any small potential gains must be weighed against the risk and liabilities. The commenter believes these to be small, but manufacturers which have recalled engines in response to SEA or in-use failures would likely not agree, because of the high costs involved.

The comments from NRDC also objected to the banking of credits in 1990 to ease the transition to the 1991 standards because the pre-1991 standards provided room for "extra" reductions and were "lax." These pre-1991 standards were often met in the mid-1980's without any extraordinary or "innovative" controls.

According to the comment, trading and banking allows manufacturers to claim windfall credits by making use of extra reductions that are now unusable, such as reductions from bettering the 1990 standards. "Total emissions may not be higher than they were previously *allowed* to be, but emissions will be higher than they *actually were*."

EPA has carefully evaluated the banking of credits for 1990 in light of this comment and has substantially limited the program. While EPA believes that credits should be available in 1990, the Agency believes that engines should be able to qualify for credits only if they achieve a significant reduction below the 1990 standards and have reductions below the emission levels typically achieved by engines on average in earlier years. To achieve this aim, eligibility for credits will be limited to either (1) engine families certified to levels that achieve at least 50 percent of the additional reduction required by the 1991 standards, as compared with the 1990 standards for NO_x and PM emissions, or (2) engine families whose production-engine emissions are equal to or better than engines certified under the first option and which are held to an FEL less than or equal to 0.49 g/BHP-hr for PM or 5.7 g/BHP-hr for NO_x (and whose certification levels are not higher than 0.49 g/BHP-hr for PM or 5.7 g/BHP-hr for NO_x), with adequate design margins to account for variability as discussed previously. Given this necessity to allow for normal production variability, the second option is expected to be at least as stringent as the first, and at least equivalent in its environmental effect.

The requirement for emissions reductions addresses the concern that credits not be allowed in 1990 because the standard was "lax." The comment maintained that "many" engines had bettered the 1990 standard in the mid-1980s as a way of showing that the standard was an inappropriate basis for credits. Engines with a NO_x emissions rate equivalent to 50 percent of the difference between the 1990 and 1991 standards have a certification emission level of 5.50 g/BHP-hr or lower. Only about 11 percent of the 1986 engine families (11 out of 102) achieved NO_x emission levels below 5.50 g/BHP-hr, based on EPA's review of the certification data for that year (which has been included in the docket). There was no PM standard in 1986, but EPA believes that few if any engine families had emission levels at that time that were equivalent to a level of 50 percent of the reduction required by the 1991 standard, as compared with the 1990 standard. There also is a trade-off between achieving PM and NO_x reductions, and once a PM standard was established it complicated the effort to reduce both emission levels. Thus engines meeting the above requirements represent a significant improvement over the levels attained in the mid-1980s.

Such reductions requirements also ensure that these engines provide an environmental benefit that goes beyond what was typically provided by most engines in the preceding years. These tests identify engine families making the best use of technology to reduce

emissions within the time frame available. These levels of reduction also exceed what was achieved on average by engines in the preceding 1989 model year. To be eligible for credits in 1990, engines would have to have certification or comparable emission levels of 5.50 g/BHP-hr or lower for NO_x emissions, which compares with the 7.0 g/BHP-hr average certification levels of NO_x emissions in 1989. (The emission standard in 1989 was 10.7 g/BHP-hr, and was lowered to 6.0 g/BHP-hr in 1990.) In 1989 about one-third of the HDDE families had NO_x certification emissions rates of 5.50 g/BHP-hr or lower. With respect to PM emissions, to achieve reductions of 50 percent of the difference between the 1990 and 1991 standards, engines would have to achieve certification or comparable emission levels of 0.42 g/BHP-hr. The average PM certification emissions level in 1989 was 0.47 g/BHP-hr. Only about one-fourth of 92 HDDE families had emission levels that low in 1989. Thus, the eligible engines achieve reductions not ordinarily attained on average or by most engines before the trading and banking program was formally proposed in May, 1989. The need for adequate design margins would generally mean that certification levels for engines earning NO_x credits in 1990 would need to be even lower than the 5.5 g/BHP-hr qualifying level, and typically would be expected to be closer to 5.2–5.3 g/BHP-hr. In the case of PM emissions, the criterion substantially limits eligibility. EPA will also closely monitor the certification levels and FELs of the qualifying engines in light of the available data to ensure that design margins are adequate.

EPA has been concerned that the qualifying engine families achieve reductions beyond what has been achieved in the past. For this reason, EPA considered limiting credits to new engine families, and precluding credits for carryover engine families that achieved similar emission rates in earlier years. Such a requirement would, however, have precluded credits for carryover engine families that had emission rates equivalent to or better than some new engine families. Indeed it would have made ineligible for credits some carryover engines that had met the 1991 standards in earlier years. These carryover families, however, had done the most to advance technology by meeting the 1991 standards at an earlier time. There also are administrative difficulties in implementing a test that is based on a new engine family definition. The above reduction requirements are preferable in avoiding these difficulties while still ensuring that credits are available only for engine families with emission rates below what was typical for most engine families on average in the prior year.

In sum, EPA believes the above emissions reduction requirements represent an appropriate test to indicate engine families with a significant level of emission reductions for which credits should be available. As with all credits in the trading and banking program established by this rule, the credits generated in 1990 will be subject to a 20 percent discount.

The third point raised by the commenter is an assertion that improved or advanced emission control technology identified by EPA as an environmental benefit of trading and banking is speculative and if such technology were developed EPA would not be able to reduce standards to take advantage of the improvements. EPA certainly cannot guarantee that these programs will result in the development of improved or advanced emission control technology. Nonetheless, it must be recognized that these programs create an incentive where none now exists. If such technology is developed, EPA sees no impediments to its eventual application as a basis for a more stringent standard. Both the NPRM and this rule give notice to the industry that this may occur, and EPA's past record of technology transfer from light to heavy-duty vehicles/engines gives evidence of the Agency's willingness to do so when better emission-control technology is identified (see 48 FR 1406, January 12, 1983, 48 FR 52170, November 16, 1983, 50 FR 10606, March 15, 1985, and 48 FR 1430, January 12, 1983).

In summary, for the reasons laid out above, EPA does not believe that emissions will increase with the implementation of trading and banking. In fact, to the contrary, as is discussed in section III of this document EPA finds a number of reasons why an environmental benefit will occur. These far outweigh any perceived shortfalls identified by the commenter.

The commenter also maintained that banking is not consistent with the Act because it violates the one year life of a certificate of conformity as described in section 206. EPA agrees that the certificate of conformity is limited to one model year, and that every engine family has to be re-certified for each new model year. However, EPA does not agree that this also requires credit life to be limited to one year. The certificate duration only covers production. Even though a manufacturer's certificate to produce engines in a given model year expires each year, the manufacturer is still accountable for the in-use performance of its production with regard to meeting the emission standards/FELs for years beyond. Thus, there is a time period in excess of one year over which conditions of the certificate must continue to be met, which is analogous to the time period associated with the credit life under the banking provisions. Section 206 also allows the Agency to issue a certificate upon the "terms" prescribed by the Administrator, and the credit provisions are within the authority to prescribe terms.

The final point raised by the commenter is that trading and banking programs when added to averaging would reduce NCPs to a superfluous role. EPA has already discussed this point in the NPRM. The Agency agrees that credit exchange programs such as trading and banking provide another means to gain certification when emission levels are above the standard. However, even when added to averaging, EPA does not think these programs make NCPs superfluous either from a legal or practical perspective. First, EPA has already conducted an analysis of whether NCPs are needed for the 1991 and 1994 standards and an NPRM has recently been published. More importantly however, is the question of whether NCPs will be used if credit exchange programs are in place. There are several reasons why EPA believes NCPs are needed even if trading, banking and averaging are available. First, as has been discussed above, the 1991 and 1994 emission standards are quite stringent, and it is not at all clear that credits will be available to meet all needs. Second, it should be noted that trading, banking, and averaging are voluntary programs and manufacturers are not required to generate, sell, or buy credits. Credits simply may not be available because manufacturers who are able to generate marketable credits choose not to do so. For example, manufacturers who are particularly averse to risk of SEA failure may choose to retain all credits that are generated for their own use. Also, a manufacturer need not participate or may not be able to participate to a degree adequate to eliminate the need for NCPs. For example, limited product line manufacturers may have few opportunities to generate credits and either may choose not to trade or may not be able to find a trading partner. Then too, some manufacturers have indicated in past comments to EPA that they would prefer to pay NCPs rather than buying credits from their

competitors. Certainly in the view of these manufacturers, NCPs are not superfluous. It is also an important distinction that, once promulgated, NCPs are a safety net and a sure source of relief for the manufacturers. The same cannot be said for credit exchange programs such as banking and trading. In this regard, it is also worth noting that NCPs serve an important role in capping credit prices for trading, since those needing credits could purchase NCPs if the credit price is too high. Absent NCPs, price gouging would be a possibility. Finally, where credits are used in lieu of NCPs, air quality will be enhanced.

Even with the compliance enhancements by banking and trading, EPA anticipates that technological laggard families may still exist and these families may not have access to credits or may choose to use NCPs in lieu of trading with competitors. Thus, while EPA cannot necessarily demonstrate that NCPs will be used in all cases, it certainly can envision situations occurring where NCPs will be used. Credits and NCPs serve similar but complementary roles. The availability of credit-exchange programs does not eliminate the need for an NCP program.

Thus, EPA believes that trading, banking and expanded averaging are consistent with and support the goals and provisions of the Act. Compliance with the technology forcing 1991 and 1994 NO_x and PM emissions standards will be enhanced, emissions will be reduced, not increased, and the important role of NCPs will not be supplanted. Furthermore, as indicated in the discussion above, EPA does not think that banking, trading or expanded averaging contradict the provisions of section 206 regarding certification and testing.

G. Credit Use and Credit Calculation

As with the current averaging program, participation in trading, banking, or expanded averaging is voluntary. At its option, a manufacturer may include all, some or none of its engine families in these programs. Credits from banking or trading can be used in certification as part of an averaging program with credits from other families, or applied to the separate certification of an individual engine family. However, they must be used in the averaging set where they were generated. Credits can also be used for recertification of a manufacturer's future production to a higher FEL following SEA failure, however, credits cannot be used to remedy an in-use non-conformity that would currently be remedied by recall according to the provisions of the Clean Air Act. This includes engines produced prior to SEA failure which are subject to recall.

Individual manufacturers cannot both deposit and withdraw credits in banking programs for the same averaging set during a given model year. This is designed to prevent *de facto* extension of credit life by banking new credits and withdrawing an equivalent number of old credits from the same averaging set each year. It will also discourage hoarding and encourage the availability of credits for trading.

Emission credits are based on the total mass of emissions generated by an engine family during its useful life. They are calculated for each engine family based on the difference between the applicable emission standard and the FEL, multiplied by the total production, brake horsepower (BHP) and useful life of the engine family. Credit values are positive (*i.e.*, credit-generating) if the family certifies below the emission standard and negative (*i.e.*, credit-using) if the family certifies above the emission standard. To convert the certification emission rate in g/BHP-hr to total mass of emissions, it is necessary to use a conversion factor.

EPA proposed two alternative conversion factors for credit calculation, based on either the EPA transient test cycle or the MOBILE4 emission factor model. The first alternative yields a conversion factor that is representative of the individual engine family for which the credits are being calculated. The second yields a conversion factor that is representative of the overall HDE subclass of which the engine family is a part. Most commenters expressed a preference for the transient test cycle method of calculation, stating that it provided the most representative conversion factor, and EPA concurs with this choice.

Using the transient test cycle conversion factor, credits are calculated as follows:

$Cr_f = (Std - FEL)(CF)(UL)(Production)(10^{-6})$ [3]

where:

- Cr_f = Family credits (total mass of family emissions in Megagrams)
- Std = The applicable NO_x or PM emission standard
- FEL = Family emission level in g/BHP-hr
- Conversion Factor

$$(CF) = \frac{\text{Transient test cycle BHP-hr}}{\text{Equivalent transient cycle mileage}}$$

- UL = Useful life in miles, as described in 40 CFR part 86, 86.090–2 or § 86.090–21(f)
- Production = the number of engines produced per model year or portion thereof.
- $10^{-6} = 10^{-6}$ Megagrams per gram.

The conversion factor represents equivalent work per mile during the EPA heavy-duty engine transient test cycle. This is family-specific and is the same as is presently used to determine emission rates for certification purposes. Equivalent mileage used for the calculation is 6.5 mi. for heavy-duty diesel-cycle engines and 6.3 mi. for heavy-duty Otto-cycle engines. This was determined by multiplying the average speed of the EPA heavy-duty chassis cycle trip (19.45 mph) by the duration of heavy-duty engine transient test cycle (1199 seconds for the diesel cycle and 1167 seconds for the Otto cycle).

Many engine families contain a number of configurations which must all meet the applicable emission standard or FEL, but which may have different BHP ratings. This introduces a problem regarding the conversion factor calculation (CF from above) since it is not clear which configuration should be used. For families with more than one configuration, EPA proposed a production-weighted average value of the configurations and requested comment on four alternative methods for determining which configuration would represent the family: (1) The configuration with the highest sales (projected), (2) the configuration with the highest brake-specific fuel consumption (BSFC), (3) the configuration with the highest certification level, and (4) the configuration with the highest conversion factor for families using credits; the one with the lowest conversion factor for families generating credits.

No clear consensus emerged from the comments regarding any of these options. Many of those who chose to comment expressed a preference for the approach which used a sales weighted average of configurations within an

[3] For calculating credit availability for trading or banking purposes, a factor of (0.8) should be included to provide the required 20 percent discount. This factor is not necessary for calculating credit need or credit availability for averaging.

engine family. However, even though this was the approach proposed, EPA does not now believe it is prudent to use projected sales as a determinant for the conversion factor. As is discussed further in the Summary and Analysis of Comments document, EPA has reached this conclusion for three reasons. First, basing the conversion factor on projected sales of the configurations involved, and the entire calculation on projected sales for the whole family, could essentially double the risk associated with errors in sales projections. The final production values would not be known until the end of the model year. At that point in time, compliance for engine families involved in averaging or trading may be jeopardized, since both the conversion factor and overall credit balances would depend on production. Second, perhaps a more fundamental concern is that EPA regulations governing test vehicles and engines (§ 86.085–24) do not require manufacturers to test all of the configurations they sell or even to submit data on all of the configurations they test. Under these circumstances basing the family conversion factor on a production-weighted average of configuration conversion factors seems unworkable. Third, basing the family conversion factor on a production-weighted average is akin to configuration based averaging, an approach EPA has long believed is inconsistent with the Clean Air Act.

Furthermore, while there may be some correlation, EPA could not be sure that the configuration with the highest BSFC or highest certification level would always have the conversion factor which would assure that other configurations in that family generated or used at least the number of credits predicted by the governing configuration selected by these means.

This leaves only one option: *i.e.*, the configuration with the highest conversion factor for families using credits and the lowest for families generating credits. This approach has two benefits. First, it is independent of production and thus introduces no uncertainty. Second, for multiple configuration families a small environmental benefit will occur, since other configurations in that family will be generating more or using fewer credits than the governing configuration. An EPA analysis available in the public docket suggests that for the 1989 model year, if all multiple configuration families were involved in credit exchanges, they would amount to 27 percent of the total number of HDGE and HDDE families, encompassing some 41 percent of the total engines produced. Environmental benefits of 1 to 38 percent of the credits generated by individual multiple configuration families could be provided, with an overall sales-weighted average of about six percent for HDDEs and nine percent for HDGEs. Analysis of incomplete 1990 certification data indicates that about 20 percent of the total number of HDGE and HDDE families, encompassing 35 percent of the engines produced, would be multiple configuration families. For 1990, the analysis estimates environmental benefits of 1 to 45 percent of the credits generated by individual multiple configuration families, with an overall average benefit of two percent for HDGEs and eight percent for HDDEs. These figures are different than for 1989 engines because emission standards are more stringent and not all families are eligible to participate. While the analyses for 1989 and 1990 give an indication of what the environmental benefits could be, it must be noted that participation in the programs is voluntary and manufacturers may or may not include these families in averaging, trading or banking.

In the course of reviewing manufacturer correspondence to EPA's Certification Division regarding the Trading and Banking Program, the Agency has ascertained that some manufacturers are planning to disaggregate their currently certified multi-configuration families for purposes of generating additional credits. Although separate certification is permitted (but discouraged) in order to allow manufacturers flexibility in introducing new configurations, this has not been common practice, even in years when emission standards have changed. In fact, over the past 20 years manufacturers have normally taken numerous steps to minimize the number of engine families they certify. The Agency believes the disaggregation of current families in the middle of the model year is contrary to the basic intent of the engine family and certification concepts. As stated in § 86.090–24, engines should be aggregated into groupings which are expected to have similar emission characteristics throughout their useful lives. To separate configurations with essentially the same emission characteristics into new engine families violates the spirit and intent of the regulatory provisions regarding engine families, and creates the potential to reduce some of the abovementioned environmental benefits that would otherwise accrue to the trading and banking programs. Consequently, EPA will not allow multi-configuration engine families which are arbitrarily disaggregated into multiple families to generate credits for 1990 and later model years.

Finally, one additional issue with respect to credit generation/credit calculation has arisen as a result of preliminary manufacturer inquiries regarding the 1990 banking program. Some manufacturers have inquired as to the possibility of using #1 diesel fuel for certification purposes, rather than the more commonly-available #2 diesel fuel. Since #1 fuel has a much lower sulfur content than #2 fuel, PM emissions could be reduced, thereby resulting in additional credits being generated without commensurate effort on the part of the manufacturer. Current regulations regarding certification fuels, found in § 86.1313–90, state only that the grade of fuel recommended by the engine manufacturer (to the customer) will be used for certification. It has long been EPA's view that fuels used for certification purposes should have the same basic properties as available in-use fuels. The Agency has some concern regarding the availability and likelihood of use of #1 diesel fuel, since it is not as widely-available as #2 fuel and is somewhat higher in cost. However, EPA will allow use of #1 fuel for certification (and credit generation) purposes, provided the engine manufacturer can reasonably demonstrate to the Administrator's satisfaction that such fuel is both reasonably available and will be purchased in-use. This philosophy is in accordance with that set forth in the abovementioned regulatory language, which states that manufacturers must make similar demonstrations for any other fuels to be used for certification purposes.

H. Certification, Compliance and Enforcement

This section provides an overall program outline. Any further details that may be necessary will be provided via Advisory Circulars or other directives and guidance from the Office of Mobile Sources Certification Division.

As stated above, participation in the banking and trading programs is voluntary. Manufacturers may include or exclude any or all families from any of the programs, at their option. For those manufacturers who choose to participate, compliance for included engine families will be evaluated in two ways: First, compliance of individual engine families with their FELs will be determined and enforced in the same manner as compliance with the emission standards under the current certification

programs. This holds true for SEA and recall programs as well. Second, overall compliance of each participating engine family with the applicable NO_x and PM emission standards will be determined as described later in this section. It should be noted that this is a change from the procedure now in place for the original HDE averaging rule, since each family must comply, rather than the averaging set as a whole. However, engine families not involved in averaging, trading, and banking programs will not be affected.

As under current certification, the program will be implemented and enforced through the certificate of conformity which the manufacturer must obtain for the engine family before any engines can be introduced into commerce. The certificate for each participating engine family will be conditioned on the manufacturer obtaining sufficient credits to bring it into compliance with the applicable NO_x and PM emission standards. To do this, the manufacturer must first determine the FEL for the family and, with projected production estimates, calculate the mass emissions for the family, using the equation in subsection G above. A positive value indicates credits are available for use in banking, trading or averaging, or may be reserved for future disposition later in the model year. A negative credit balance for that family indicates that credits are needed from averaging, trading or banking, or that a separate family using a nonconformance penalty (NCP) will need to be created. In each case, the magnitude of the positive or negative number indicates how many credits are available or needed.

Having determined an overall compliance strategy, the manufacturer then prepares an initial credit report, which will be submitted along with the manufacturer's application for certification for each participating engine family. The initial report will indicate the FEL, the projected quarterly U.S. (49-state) production, the number of credits expected to be generated or needed during the model year, how and where the credits will be obtained or disbursed, and projected use of NCPs in a similar family (following EPA guidelines established for that program). Credits designated for banking and trading must be discounted by 20 percent as discussed above. A suggested reporting format is shown in Figure 3, along with a detailed description for each of the fields in the report. The initial certification for an engine family will be based on projected credits from the initial report; however, the final compliance determination will be based on actual credits reported by the manufacturer at the end of the production year.

Those engine families participating in trading using reserved credits (those generated in the same model year they are traded) will be required to maintain records providing actual engine production information, as well as a summarization of all credit transactions for the quarter. These quarterly reports must be placed in the manufacturer's audit file within 30 days of the end of the quarter. For these quarterly reports, production will be tracked on the basis of the end-of-production line counts. EPA may from time to time audit the credit balance of these engine families by requesting status reports providing credit generation or usage information during the course of a model year.

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FIGURE 3

CREDIT REPORT, _____MODEL YEAR

MANUFACTURER_____ ENGINE FAMILY_____ AVERAGING SET_____
POLLUTANT_____ FAMILY EMISSION LIMIT_____ EMISSION STANDARD_____
USEFUL LIFE_____ CONVERSION FACTOR_____ NCP IN USE Y/N?_____

(A) REPORTING PERIOD	(B) 49ST. PROD VOLUME	(C) CREDITS (+/-)	(D) AV'GING PROG AMT-TO/FRM	(E) TRADING PROG AMT-TO/FRM	(F) BANKING PROG AMT-TO/FRM	(G) CREDITS RESVD	(H) NCPs IN USE
PROJECTED							
Q1							
Q2							
. . .							
ACTUAL-Q1 (CUM)							
ACTUAL-Q2 (CUM)							
. . .							
END OF YEAR							

Note: Quarterly and cumulative production (Column B), credit transactions (Columns C-G), and NCPs in use (Column H) are required when applicable. Column C represents total credits generated or used, (+) for credits generated, (-) for credits needed or used, and should, if reported correctly, equal the sum of columns D-G. Columns D-F indicate the number ("AMT") and disposition of credits generated ("TO") or source of credits used ("FRM"). Column G ("CREDITS RESVD") represents those credits pending designation for averaging, trading or banking. Credits designated for banking & trading must be discounted 20 percent using the applicable formula from 40 CFR Part 86. Column H ("NCPs IN USE") represents any NCPs used by the engine family during the model year.

BILLING CODE 6560-50-C

Final compliance determinations will be based on each individual family meeting the NO_x and PM emission standards rather than compliance for all engine families in the averaging set as a whole. More specifically, this is to be demonstrated by each family's mass emission balance being equal to or greater than zero, considering the sum of the mass emissions from the FEL calculation in subsection G and credits gained from averaging trading and/or banking. For purposes of demonstrating compliance, the manufacturer will submit a final report within 90 days of the end of the model year for each family involved in averaging, trading, or banking. If a group of HDEs is split into two families on the basis of NCP usage, the manufacturer must also submit this report for the NCP engine family. This report will require the information called for in Figure 3 and also must include actual production for the year (as defined by delivery of the engine to a dealer or secondary manufacturer), numbers of credits generated/used, parties and terms of any credit transactions during the year, and the number of credits banked or withdrawn. At this point, reserved credits must be designated to averaging, trading or banking programs. Credits designated for banking and those credits generated and used for trading within the same model year must be discounted at 20 percent as part of final compliance calculations. Previously banked credits used in trading need not be discounted again. Previously banked credits used in a subsequent year's averaging program will not have the 20 percent discount restored. As stated earlier, compliance or non-compliance would be determined based on this report, as reviewed by EPA.

Manufacturers will be allowed to make last-minute credit transactions between the end of the model year and submittal of their end-of-year report to correct any negative credit balances identified after the end of the model year. NCPs will not be available for this purpose. As part of their year-end report, manufacturers must demonstrate that, on a mass basis using the equation above and credits from averaging, trading and banking, the sum of these terms is equal to or greater than zero.

EPA proposed to void *ab initio* the certificate for an engine family exceeding the emission standard as a result of a credit shortfall (*i.e.*, causing a negative credit balance). In response to public comments on this issue, which suggested that only the certificates of engines creating the balance should be made void *ab initio*, EPA has given further consideration to the possible impacts, but has decided to finalize this provision essentially as proposed since certificates are issued to families, not individual engines. This is discussed further in Section IIIB, below.

However, as stated above, manufacturers are permitted to make last minute credit transactions to ensure the mass emission sum is zero or greater for each family, so the only reason for a failure to meet the applicable NO_x and/or PM emission standard at the end of the year is a lack of credits available for purchase or manufacturer error. With good tracking during the course of the production year, shortfall problems can be handled through NCPs as well, but these are not available after the end of production for the model year. In further response to the manufacturers' concerns, if EPA's review of a manufacturer's end-of-year report indicates a shortfall, EPA will ordinarily permit the manufacturer the option to obtain the needed credits at a rate of 1.2:1 for each credit needed, rather than having the certificate voided *ab initio*. If sufficient credits are not available, then EPA may void *ab initio* certificates for the noncomplying engine families. This option will not be available if EPA's review indicates a pattern of errors which could be viewed as intentional when taken together. If the pattern of errors appears to be ongoing, *i.e.*, recurring consistently over a period of time, EPA may preclude the manufacturer from further participation in the program. Failure to submit the end-of-year report may result in certificates being voided for all engine families involved and the imposition of appropriate penalties.

Also, as part of this increased flexibility, if EPA's review of a manufacturer's end-of-year report indicates an error in the manufacturer's favor, these credits will be returned to the manufacturer, if found within 90 days of submittal. Similarly, manufacturers may correct errors in their favor and regain the credits identified within 90 days of the year-end report. Shortfalls uncovered after 90 days will still have to be remedied, and any erroneous credit calculations indicating more than the actual number being generated will be corrected and all credit balances will be appropriately adjusted.

Year-end reports should be submitted to: Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Credits will remain reserved until the manufacturer's year-end report is received by EPA. The Agency does not intend to validate or verify credits within a given time period, as may have been implied in the NPRM. However, any calculation errors or credit shortfalls determined by the Agency's review of the end-of-year report or subsequent compliance audits may result in loss of credits and appropriate enforcement action being taken. Credits may not be considered banked until the end of the model year and submission of the end-of-year report. However, these credits can be used for averaging and trading in the same model year, before submission of the report, or in the subsequent model year. Also, reserved credits may be used to certify engine families for the next model year. However, if used in averaging or trading, they could be revoked pending resolution of any subsequent credit calculation errors, shortfalls, or follow-up compliance or production audits by EPA.

Although manufacturers must maintain complete sales and other records for purposes of future audit by EPA, for the end-of-year report, credits (or needs for credits) are considered actual upon first delivery of an engine to a customer, dealer or a secondary manufacturer, rather than to the ultimate purchaser as was proposed. EPA will consider alternatives or modifications to this "first delivery" approach in the case of secondary manufacturers, *e.g.*, ambulances or school buses, which are few in number and distribute vehicles over a wide geographic area. EPA recognizes that in some cases engines sold to dealers or secondary manufacturers outside of California may be used in California and vice versa, and in some cases engines sold to U.S. dealers or secondary manufacturers may be exported even though they have U.S. certificates. Thus, credit reports based on delivery and sale to dealer or secondary manufacturer may not precisely reflect what the actual credit results would be if reports were based in the location of the ultimate purchaser. The loss of precision is insignificant since it involves both engines emitting above and below the applicable emission standards, and engines both sold and used in and out of areas where these programs apply. Thus, in some cases actual credits could be slightly greater or less than reported. As discussed in the comments, basing credit calculations on the ultimate purchaser was considered impractical and costly and would have required several more months for manufacturers to submit credit reports, thus further delaying credit use. Basing end-of-year

reports on sales to dealers or secondary manufacturers provides acceptable precision, considering all factors.

Finally, as part of all end-of-year reports, manufacturers must identify the source of all credits and provide a copy of the contract if a purchase from another manufacturer or broker is involved. This is a mandatory part of the end-of-year report.

I. Liability for Credit Shortfall

Under trading, EPA proposed to make both buyers and sellers of credits potentially liable for any credit shortfalls, except in cases where fraud was involved. Most industry commenters stated that for equity reasons liability should be limited to only those factors under the direct control of the respective parties, (*i.e.*, failure to contract for sufficient credits should be the responsibility of the buyer and failure to deliver the promised credits should be the responsibility of the seller). EPA understands the manufacturer concerns over this issue. However, the Clean Air Act places the responsibility on the engine manufacturer to ensure that all of its engines introduced into commerce are covered by a valid certificate of conformity. More specifically, a manufacturer is liable for the validity of its certificates under a trading program, even if one or more other manufacturers fails to deliver agreed-upon credits. Also, some cases are likely to arise where the most culpable party either cannot be identified or does not have the resources to be held financially responsible, (*e.g.*, in the case of a judgment-proof party (manufacturer/broker)). For these reasons, when liability cannot be clearly established, action would generally be taken first against the credit user. However, in all cases, the Agency reserves the right to take action against any or all of the parties involved. This provides additional incentive for buyers and sellers to take the steps necessary to ensure the integrity of the transaction, to place contractual liability on the appropriate party or not to trade using credits generated and traded in the same model year (reserved credits). It is understood that this tends to discourage credit trading in some situations, since it might tend to limit choices to trading of banked credits only. However, the Agency believes that any disadvantage that may result will be offset by the additional safeguards provided against credit shortfalls.

In summary, manufacturers involved in trading of reserved credits must assume some risks, since both parties can be held liable. In practice, this means that parties trading in reserved credits should establish contractual provisions that will provide appropriate safeguards, as was discussed by the commenters. If this is unacceptable, any problems can be eliminated by trading only banked credits. Further discussion of this issue can be found in the NPRM and below in section III B 1.

J. Recordkeeping and Access

Because any new program introduces possibilities for misuse, an ongoing and vigorous enforcement program is essential. The integrity of the new banking, trading and averaging programs depends on accurate recordkeeping and reporting by manufacturers and effective tracking and auditing by EPA. Consequently, failure of the manufacturer to maintain the required records will result in the certificates for the affected engine families being voided *ab initio*. Manufacturers will not have to track components, only completed engines. This includes, but is not necessarily limited to, information such as engine serial number, production date, shipment date, purchaser, and bill of sale or purchase contract. Pertinent records are also subject to EPA inspection and audit, necessitating access to these records by EPA personnel. Failure to provide such access could also result in voiding *ab initio* the certificates for all affected engine families. Either of the above violations could result in the manufacturer being subject to Section 205 penalties of up to $10,000 per engine.

K. Interaction With Nonconformance Penalties

As stated in the NPRM, EPA has developed three general guidelines regarding the interaction between the nonconformance penalty (NCP) and banking/trading/averaging programs. First, to prevent gaming of these programs, credits for banking and trading cannot be generated by either a single engine family or any engine families in an averaging set where NCPs are used. Second, due to the tradeoff frequently encountered between NO_x and PM emission rates in a given engine, use of a NO_x or PM NCP precludes that family from generating either NO_x or PM credits. Third, use of credits provides an air quality benefit compared to use of NCPs, since the higher emissions from NCP engines are not offset by correspondingly lower emissions from other engine families.

Using these guidelines, EPA proposed a number of restrictions regarding the interaction of the trading and banking programs. Commenters to the NPRM generally supported these provisions, thus with exception noted below, the Final Rule provisions are as follows: First, as proposed, for the 1990 model-year, single engine families using either a NO_x or PM NCP may not generate either NO_x or PM credits for banking. This provision applies to 1991 and later model years for banking and trading. Quite simply, engine families using NCPs cannot also generate credits; the provision (below) to put the similar NCP engines into a separate family does not remove the prohibition for the non-NCP, credit-using version of the family. Second, for 1991 and later model year engine families, if a manufacturer has any engine family in a given averaging set which is using NO_x and/or PM NCPs, none of that manufacturer's engine families in that averaging set may generate either NO_x or PM credits for banking and trading. This provision applies even if the engine family involved is not included in the averaging program. The third provision proposed was that because of concerns discussed in the NPRM, any manufacturer who desires to pay NCPs for an engine family that has credits available for use in that averaging set, would lose all of these available credits. This was proposed as a means to optimize environmental benefits since it would provide an incentive for manufacturers to use their available credits before paying NCPs, and yet will not deny the availability of NCP, if desired. Upon further reflection EPA has realized that the use of NCPs in lieu of available credits does not lead to an environmental loss since the credits will either be used to offset noncompliance elsewhere or remain banked. Either way, the credits will represent a net gain over what otherwise would occur. Thus, this restriction is not included in this Final Rule.

Some uncertainty arises as to the structure of a program handling NCPs and credits as well as in the methods of introducing credits into the NCP calculation. To avoid any program design complications caused by simultaneous NCP and credit use by a family, the following procedure is established. An engine family needing both NCPs and credits to meet the emission standard will be separated into two families. One family will strictly use credits, will be assigned an FEL, and will involve only the number of engines which can be certified to the emission standard using the credits available. The other family will strictly use NCPs and will be comprised of the remainder of the engines in the original engine family. In this way, the manufacturer will assign

the number of engines to each family (as available credits allow) to always ensure a compliance with the standard and, thus, to provide a means of quick remedy of any noncompliance program (since future production could be shifted to the NCP family). The use of such a procedure requires the manufacturer to submit a separate report for each family, one showing credit transactions and the other showing NCP use. Also, to implement this approach, the use of an NCP is now specified as an engine family criterion. However, as mentioned above, it should be clear that the provision to make NCPs a family criterion does not permit the like-credit family to generate credits.

III. Public Participation

The following section presents a brief synopsis of the comments received on the NPRM and the EPA responses to those comments. A separate and more detailed Summary and Analysis of Comments on the NPRM has been prepared, and is available in the public docket. The interested reader is referred to that document for a more complete discussion of the comments, including some of the minor concerns which, though evaluated, are not presented here.

A. Environmental Concerns

The NPRM contained an extensive discussion of environmental concerns, which focused on the potential for national and local air quality impacts. Concerns for national or more widespread impacts included loss of emission design cushions, marketing strategies, "false credits", rebuild practices, cross-fuel credit exchanges, interactions with NCPs, and banking concerns. Local air quality concerns under banking and trading included differences in urban usage for heavy-duty vehicles and an unorderly use of banked credits.

One of the guidelines used in developing the NPRM was that these programs should not cause adverse air quality impacts either nationwide or locally, and this was one of the key factors which dictated the design and structure of the programs proposed. It was EPA's original view that expanded averaging, trading, and banking should result in overall emissions equal to or less than that achieved if every engine met the emission standard, and EPA identified a number of ways in which these programs would provide environmental benefits. The nature of the program that has now been defined will reduce emissions below levels that would otherwise occur if every engine met the applicable emission standards.

In the NPRM, EPA stated that the proposal did not address the impact of possible increases in unregulated pollutants due to the inclusion of methanol-fueled HDEs in the banking and trading programs, and asked for comments on the issue. The NPRM noted that there were uncertainties, resulting from the limited body of data available regarding unregulated pollutants from methanol-fueled engines, related to possible increases in unregulated pollutants such as formaldehyde and also uncertainties as to possible global warming impact of increased methanol production. Due to these uncertainties, the Agency was interested in receiving comments on such concerns; however, none of the comments received directly addressed these issues. The reader is referred to the NPRM for additional discussion of this topic.

Summary of the Comments

A number of commenters concurred that design restrictions would be needed in the banking and trading programs to eliminate potential adverse environmental impacts and stated that banking and trading programs would encourage the development of advanced emission control technology by helping to offset development costs. Others, however, felt that banking and trading programs might discourage development of new technology, due to the uncertainty over whether a market for the new technology would exist.

Other commenters expressed concern about the possibility of an increase in emissions with these programs. This potential increase was attributed to inadequate restrictions in the banking and trading programs, a decrease in manufacturer design margins, and a decrease in the current overall compliance margin, since manufacturers could now enter credit exchanges with these extra margins. One commenter stated that by their very nature these programs would lead to an overall increase in emissions, since some families would be certified above the standards using credits while this would not be possible if programs using the averaging concept are not permitted.

EPA Response to the Comments

During development of the aforementioned EPA staff report and analysis of the comments received on that report, the environmental impact of banking and trading programs was carefully evaluated. As was discussed in detail in the NPRM, environmental impact was one of the key factors which dictated the design and structure of the programs. The basic design of the averaging sets and many of the implementing provisions which EPA proposed were driven in large part by the desire to assure that environmental impact concerns received every consideration. It was EPA's view, as expressed in the NPRM, that banking and trading programs would have no adverse environmental impact and in fact would provide, at least directionally, an environmental benefit.

EPA has made some revisions to the proposed program in response to comments received, and in most cases these had the additional effect of enhancing the environmental benefits which could be expected from these programs. Overall, EPA has identified six areas where environmental benefits will occur. First, requiring all credits generated for banking and trading to be discounted by 20 percent at the outset represents an immediate benefit to the environment and a clear net positive air quality benefit in the long run as well.

Second, determining the number of credits generated or needed for an engine family under averaging, trading, and banking requires knowledge of the engines integrated horsepower to calculate credits. For multiple configuration families, rather than using an average of the configurations, EPA has decided to base this calculation on the configuration with the least integrated horsepower in the case of credit generation and the largest integrated horsepower in the case of credit use. Based on EPA analysis for 1989 and 1990 HDE engine families, this could result in an environmental benefit of as much as five to six percent of the credits generated by participating engine families.

Third, in some situations emission credits from banking and trading could be used in lieu of paying NCPs. Banking and trading do not supplant the role of NCPs, but in these situations credits provide emission reductions while NCPs do not.

Fourth, limiting credit life under banking will in some cases lead to credit "donation" since, as one commenter stated, all credits may not be used. For instance, a manufacturer may choose to bank credits as insurance against a possible SEA failure. If the failure never occurs the credits would not be used.

Fifth, banking pulls ahead emission reductions; reductions achieved in the near term are worth more to society than reductions achieved in the future, just as a dollar received today is worth more to an individual than a dollar received a year hence. Many manufacturers have pulled ahead 1991 technology to 1990 families which

reduced NO_x/PM emissions. Without a banking and trading program there would be little incentive for manufacturers to do this because of the competitive cost disadvantage associated with meeting lower emission levels.

Sixth, as was discussed above, these programs will provide an incentive where none currently exists to develop and implement advanced emission control technology and lower emitting engines using alternative fuels. These technologies could eventually become the basis for tighter standards, as has occurred in the past with technology transfer from light-duty vehicles to light duty trucks and HDEs.

All of these would have positive environmental benefits directionally, and the first two clearly provide positive benefit amounts (*i.e.*, tons of reduction). Of course, the amount of reduction would depend on the degree to which manufacturers participate in the programs. Given this analysis it is clear that trading and banking will provide emission reduction benefits over those which would occur without such programs.

EPA does not believe that the commenters who stated that there would be adverse environmental impacts are correct in their assertions. First, as is discussed elsewhere, the banking and trading programs are designed and structured to address environmental impact and virtually every restriction needed was included in the final program. Only those vehicles with similar operating and use characteristics will be permitted to exchange credits and other program provisions are being implemented to mitigate potential concerns.

Additionally, EPA does not believe that the magnitude of the design cushions will be affected by this rulemaking, especially in light of the more stringent standards in place for 1991 and 1994 and the ongoing EPA enforcement programs for heavy-duty engines. Manufacturers will still be held accountable for meeting their FELs during certification and SEA testing, and will need to fully account for in-use deterioration, production and test variability or risk the heavy burden of failing SEA or recall evaluation testing. Manufacturers will need to focus most efforts just on achieving compliance with adequate margins.

Furthermore, EPA does not believe that trading and banking will result in an increase in emissions due to the use of "extra" compliance margins to generate credits. Presumably this comment was based on observation of some emission results with current technology and current emission standards, in which some families certified at levels below those needed for the design margin. And, while in some cases this may have been possible during the transition period to tighter standards, any extra compliance margins are unlikely with the 1991 and 1994 standards. It is clear that the 1991 and 1994 standards are technology-forcing, and information available to EPA on the manufacturers' compliance efforts and strategies being used indicates that large step type reductions in emissions which lead to extra compliance margins are not being achieved, and that emission control system designs are being influenced not only by compliance with the standards but also fuel economy, performance, cost and other factors. In fact, with technology-forcing standards, manufacturers would be more likely to "trade off" any extra emission reductions (assuming such reductions are possible) for improved performance, fuel economy and/or driveability. Thus, while prudent planning and enforcement considerations will require manufacturers to incorporate design margins, EPA does not believe that manufacturers engine families will fall into big extra compliance margins which will be banked or traded. Credits developed for banking and trading will in most cases occur as deliberate technology implementation decisions with due regard to impacts on areas such as cost, fuel economy and performance.

In summary, the Agency does not place any credence in the contention that programs such as banking and trading must lead to an emissions increase because some engine families are emitting above the standards and are using emission credits to certify, which they would not be able to do without averaging-type programs. Such an occurrence would be possible only if certification under averaging concepts were not based on true and offsetting additional reductions by those families generating the credits. From a computational point of view, given the FEL structure and accompanying restrictions, there is no difference in emissions between an averaging-type approach and the traditional approach whereby every engine must meet the standards. Further, in return for the added flexibility afforded by banking and trading, EPA has defined a system that can be expected to result in lower emissions than would result from the traditional approach. Restrictions placed on the program and the technology-forcing nature of the standards themselves lead EPA to conclude there should be no cause for concern. For example, during the 1990s manufacturers are not likely to generate extra credits based on the initial reductions provided by the control technology used, since other factors which have direct and indirect costs, *e.g.*, performance, fuel economy, interaction with other standards and driveability, will also have to be considered. Rather, reductions for credit generation will tend to be based on specific engineering design decisions. In general, credits will represent planned reductions over those required to meet the standards (design margins included) and will come only from those engines where the technology permits, considering such factors as cost, fuel economy and performance. Furthermore, to meet their FELs manufacturers will still need to retain the design margins for variability and in-use concerns as is now the case, since the FELs have the same effect as the standard, so there will be no "extra" credits generated in this manner.

Thus, given that environmental impact was a key parameter in guiding the development of the program structure, some of the more specific positive environmental impact points noted above, EPA believes that these programs will lead to an overall environmental benefit.

B. Enforcement Issues

1. Liability for Credit Shortfalls

EPA proposed to make both buyers and sellers liable for shortfalls in credit trading transactions. The Agency also proposed that in the event of a credit shortfall, the certificates for all the affected families should be voided *ab initio*.

Summary of the comments. Most industry commenters felt that EPA's proposed approach to liability determination was inequitable and would discourage trading. They argued that buyers and sellers should only be held liable for those circumstances that were under their direct control. Various means for avoiding or mitigating credit shortfalls were proposed, including payment of NCPs for the engines causing the shortfall. Industry commenters also stated that EPA should not void *ab initio* the certificates for all the engines in the affected family in the event of a credit shortfall. These commenters suggested that only the certificates for the engines causing the shortfall be voided.

EPA response to the comments. While EPA understands the manufacturers' concerns over this issue, there is a need to be able to affix responsibility and

assign penalties in order to discourage credit shortfalls and assure compliance with the emission standards. Also, in some instances it may not be possible to determine which party was at fault or to financially penalize the party directly causing the shortfall, since the financial resources to pay the penalty may be lacking. As one of the commenters suggested, it remains the responsibility of the manufacturer to ensure that its engine families are covered by a valid certificate of conformity. A manufacturer is, therefore, also liable for the validity of its certificates and compliance under a trading program, even if one or more manufacturers fails to deliver agreed-upon credits. Thus, in general, action would be taken first against the credit user, particularly in cases where liability cannot be clearly established. In all cases, however, the Agency reserves the right to take action against any or all of the parties involved. If manufacturers are concerned about liability, credit purchasers can either take contractual measures to shift contractual liability to credit sellers, use other means to safeguard the integrity of the credit transaction or not trade in reserved credits. EPA recognizes that this policy can discourage trading in reserved credits and may thus curtail trading somewhat. However, the Agency believes such safeguards are necessary.

After a review of the comments, EPA has determined that certificates for all the engine families involved in credit shortfalls should be voided *ab initio*, as proposed. Certificates of conformity are issued one per family to cover the entire family. Consequently, the certificate cannot be voided for an individual engine, but must be voided for the entire family. The Agency would, of course, have some discretion in choosing which remedies and/or penalties to pursue where violations occur. However, in practice, depending on the circumstances, the penalty may be mitigated for the number of engines that were appropriately covered by credits. Or conversely, depending on the circumstances, it may be appropriate to impose the full penalties called for under the Clean Air Act. Since EPA's primary goal would be to eliminate the nonconformity, it may employ the mitigation procedure noted above to adjust the credit shortfall to bring the engine family into compliance. However, this may not always be the case, depending on the particular circumstances involved. Apparent fraud would bring about a heavier penalty than an unintentional error, for example. In the event of recall, EPA will consider which engines should most efficiently and appropriately be recalled to achieve redress. These remain matters within EPA's enforcement discretion. The Agency will pursue more severe penalties and remedies, whenever it concludes them to be appropriate for deterrence purposes. Finally, it is worth reiterating that the banking, trading and expanded averaging programs are completely voluntary. Any manufacturer who does not believe it can adequately implement the requirements specified in this rulemaking is under no obligation to participate.

Use of NCPs to make up the difference in a credit shortfall is contrary to the intent of the Clean Air Act regarding NCPs, and is contrary to the provisions in this Final Rule regarding use of credits and NCPs in the same engine family. However, a manufacturer can avoid a credit shortfall by splitting an engine family into two separate engine families, one using the available credits and one utilizing NCPs, provided that this is done before the engines are produced. Manufacturers also can make last minute credit transactions to avoid credit shortfalls. However, as was discussed above, failure to demonstrate compliance with the emission standards in the end-of-year report will result in certificates being void *ab initio* for the engine families involved.

2. Reporting and Recordkeeping Requirements

EPA proposed a reporting system consisting of an initial and a final credit report, which would be required for each engine family participating in averaging, trading and banking programs, and quarterly credit reports, which would be required only for engine families participating in the trading program. The initial report was to be submitted with the manufacturer's application for certification and the other reports were to be submitted within 30 days of the end of the calendar quarter or end of the model year, as applicable. EPA also proposed a requirement to maintain records of stocks, orders and invoices of major engine components and emissions-related parts.

Summary of the comments. Although most of the commenters supported the proposed system, some believed that the quarterly reports would be burdensome and of questionable value in monitoring compliance. A number of the commenters stated that the proposed 30-day submission requirement was inadequate and requested longer periods. Several manufacturers complained that some or all of the other recordkeeping requirements proposed were unnecessary and burdensome.

EPA response to the comments. EPA believes that at a minimum quarterly tracking on the part of the manufacturer is important as a part of monitoring of credit balances throughout the model year. Nevertheless, to reduce the reporting burden, the EPA will limit the quarterly reports for trading only to those engine families involved in trading of reserved credits (*i.e.*, those generated and used within the same model year) and will only require that such reports be completed and placed in the manufacturer's audit file within 30 days of the end of the quarter for later review by EPA, rather than being submitted directly to the Agency. Also, EPA will extend the deadline for submission of final reports to 90 days. Quarterly reports are to be based on production line counts, while final year-end reports are based on the point of first retail delivery by the manufacturer (*e.g.*, customer, dealer or secondary manufacturer). The shorter period and different approach for quarterly reports is needed for the manufacturer to effectively monitor credit generation and use for trading throughout the production year. EPA also believes, on further consideration, that the proposed recordkeeping requirements may have been too extensive, and the Agency has decided to require only that manufacturers must maintain a record of information such as serial numbers of engines built, build date, point of first retail delivery, sale date and similar data, if they do not do so at present. This information must also be made available to EPA upon request as a means to verify production for credit generation and use in averaging, trading, and banking. These requirements are described more fully in §§ 86.090–7 and 86.091–7.

3. Remedy for In-Use Nonconformity

Based on provisions of the Clean Air Act and the court decision in the case of *Center for Auto Safety* vs. *Ruckelshaus*, 747 F.2d 1, D.C. Circuit, 1984, EPA proposed to restrict manufacturers from using credits to address nonconformity that would normally be remedied through recall.

Summary of the comments. A number of commenters requested that credits be used to remedy an in-use nonconformity that would currently be remedied by recall. They cited increased cost-effectiveness and environmental benefits that might result from such usage. Another commenter, however, argued that such use of credits would be inappropriate.

EPA response to the comments. EPA believes that the legislative history of the Clean Air Act makes it clear that Congress intended for manufacturers to recall and repair nonconforming engines. Although it is possible in some instances that use of credits in lieu of recall could result in environmental benefits, EPA believes that recall would be more beneficial overall in terms of in-use engine performance and is consistent with the statute.

C. Averaging Sets

EPA proposed that averaging, trading and banking of NO_x and PM emission credits be allowed within engine cycles (diesel and Otto) between petroleum- and methanol-fueled HDEs, except that a limited cross-cycle averaging, trading and banking program was proposed for engines intended for applications over 33,000 pounds GVW (the HHDE engine class). Cross-subclass restrictions were proposed for diesel-cycle engines, although options were offered for comment. Diesel-cycle urban bus engines were also to be allowed to average and trade PM credits, within their subclass (although they would not be considered a separate subclass for NO_x averaging). Engines sold in California were not allowed to be averaged with engines sold in the remaining 49 states.

1. HDE Averaging Sets

Summary of the comments. Most commenters supported the program structure as proposed by EPA, citing the safeguards they provided against adverse manufacturer equity and environmental impacts. However, several commenters wanted to see various restrictions relaxed. Several commenters expressed support in varying degrees for cross-subclass averaging for diesel-cycle engines, but most believed that the current restrictions should remain in place until sufficient data became available to develop appropriate prorating factors to assure that such exchanges were environmentally neutral. Only a few argued that sufficient data were now available to allow such prorating factors to be developed, but no such factors were actually suggested.

Most commenters also agreed with EPA's proposed cross-combustion cycle restrictions (except for the proposed HHDE class). Some argued that allowing cross-cycle exchanges would have a negative environmental impact, since the differences between diesel- and Otto-cycle engines were even greater than between HDDE subclasses, while others cited administrative burden, equity and anti-competitive concerns.

Supporters of cross-cycle exchanges for HHDEs pointed out that the relatively small number of gasoline-fueled Otto-cycle engines in the HHDE subclass would have a minimal environmental impact, and that allowing such exchanges would serve to promote the use of clean alternative fuels. CNG engine proponents argued that thermodynamic cycle type was less important than operating characteristics in determining the appropriate averaging sets for averaging, trading and banking programs.

Most commenters supported the cross-fuel provisions in the proposal, stating that the within-cycle restrictions provided the necessary safeguards to prevent any adverse environmental effects, while still affording manufacturers additional flexibility and providing incentives for the development of alternative fuel technology.

EPA response to the comments. The averaging set structure in the NPRM was designed carefully to address both individual manufacturer equity and environmental impact concerns. For the most part the averaging sets were very similar to those in the current HDE averaging programs. At this point, EPA does not, in general, support cross-subclass credit exchanges for diesel-cycle HDEs because of environmental and equity concerns described in the NPRM. The Agency does not believe it has adequate data to develop the prorating factors that would be required to address these concerns, and no prorating factors were provided in the comments received. No commenters supported the two possible alternative approaches to this issue laid out in the NPRM. From an equity point of view, cross-subclass averaging, trading and banking could provide additional flexibility to larger manufacturers while limiting that afforded to the smaller manufacturers, which is contrary to the intent of the averaging, trading and banking program. Thus, EPA cannot at present incorporate cross-subclass averaging and trading provisions for diesel cycle engines.

Most commenters agreed with the proposed restrictions against cross-combustion cycle averaging and trading, with the exception of the proposed HHDE subclass. While a few commenters supported the HHDE subclass, most cited strong manufacturer equity and environmental impact reasons why this part of the proposal should be dropped. EPA discussed these potential concerns in the NPRM, but proposed the HHDE subclass as a means to maximize manufacturer flexibility with little or no adverse manufacturer equity or environmental impact. Given the concerns and objections raised by so many commenters and the basic guidelines used in developing these programs, the proposed HHDE engine class will not be implemented. Also, the cross-cycle restrictions in the current averaging program are extended to banking and trading programs as well. EPA appreciates the views of commenters who called for classification of engines by criteria other than thermodynamic cycle. However, the Agency does not believe sufficient data exist at present to allow classification in any other manner, but may consider this approach in future rulemakings for HDEs.

EPA can see no reason to change the proposed provisions allowing cross-fuel averaging within the same engine class/subclass and cycle type. Within these subgroups, emission characteristics and usage patterns are expected to be similar, so there should be no adverse environmental effects. In fact, the incentives provided for the development of clean alternative-fueled engines are likely to provide environmental as well as economic benefits. For these reasons, EPA will allow cross-fuel averaging, trading and banking within the cycle and subclass restrictions contained in the current averaging program.

2. Urban Bus Proposal

Summary of the comments. Several of those who commented on the issue supported the inclusion of urban buses in the averaging, trading and banking program, citing the incentive it would provide for the development of cleaner, methanol-fueled bus engines. Transit industry or related groups were also supportive of the wider proposal, citing the need for credits to meet the 1991 urban bus standard. If credits were not available, according to these commenters, they would have to continue using higher-emitting buses with engines produced prior to the establishment of any PM emission standards. If they were unable to replace these older buses, it would adversely affect air quality. They viewed the proposed program as the only solution that would permit transit systems to purchase diesel-powered buses in the 1991–93 time period to replace the older buses. They urged the awarding of "multiple credits" for "field development" programs for alternatively fueled engines. Lastly, they sought EPA action in a separate proceeding to grant their petition to waive the 1991 PM standard for diesel engines used in

urban buses. Another comment from an engine manufacturer, however, stated that inclusion of methanol-fueled urban bus engines in the NO_x averaging program was anti-competitive because only one manufacturer would benefit and because of the possibilities for gaming that it offered. Another commenter stated that such provisions are unnecessary since methanol powered urban buses will be used anyway.

EPA response to the comments. This Final Rule provides a separate subclass for urban bus PM averaging, trading and banking, as proposed. Cross-fuel exchanges are allowed within the subclass. However, for NO_x averaging, trading and banking, bus engines are considered part of the heavy heavy-duty diesel-cycle subclass to which they would otherwise belong. One commenter expressed concern that permitting HDMDEs used in urban buses to average and trade NO_x with other diesel cycle engines would create an unfair equity situation, since the market structure is such that it would potentially benefit only one or two manufacturers in the near term. EPA is sensitive to the equity issue and carefully reviewed and considered the concerns and views expressed by the commenter. While EPA acknowledges these concerns and carefully considered the possible effects, the Agency feels Mack's concerns are not demonstrated adequately to outweigh the environmental benefits provided in terms of promoting the development of alternative-fueled urban buses and believes it is unlikely that allowing NO_x averaging and trading for urban bus engines with other HDMDE diesel cycle engines will have any real or even measurable impact on this manufacturer. Urban bus engine sales are low and the NO_x emission rates of possible alternative fueled urban bus engines are not so low that a large number of NO_x credits would be generated.

Furthermore, while several HDE manufacturers have been developing methanol-powered HDEs for use in urban buses and there have been demonstration programs, it is not clear that there will be a large number of methanol-powered HDEs used in urban buses in the near term, or that the transit bus industry views these as an overwhelmingly attractive near-term technology. EPA disagrees that methanol buses should be excluded from these programs on the grounds they will be used in any event. While some methanol-powered HDEs are expected to be used in urban buses, some transit companies seek to use diesel-powered buses pending further "field development" of alternative fuel technology. Thus, provisions to allow credit exchanges between methanol- and petroleum-fueled HDEs used in urban buses would be helpful in promoting the use of clean alternative fueled engines, which will in turn help air quality.

The petition referred to in the comment from the transit bus industry illustrates the technology-forcing nature of the 1991 PM standard. The replacement of older equipment produced before there was any PM emission standard is also desirable. Thus, providing credits to facilitate the replacement of this older equipment in a way that is consistent with the Act is appropriate.

3. Inclusion of CNG Engines

Summary of the comments. Most of the commenters who addressed the issue supported the inclusion of CNG engines in averaging, trading and banking programs, due to the environmental benefits of such inclusion. At least one manufacturer agreed with EPA that it would be premature to include CNG engines in the current averaging, trading and banking program, since standards and test procedures had not yet been promulgated for them.

EPA response to the comments. As was discussed in the NPRM, EPA believes that it would not be appropriate to include CNG engines in averaging, trading and banking programs until emission standards, test procedures and other certification protocols are developed for them. However, EPA clearly understands the desires and needs expressed by these commenters and averaging, trading and banking provisions will be considered in any future rulemakings covering CNG engines.

D. Conversion Factors

EPA proposed two alternative means to be used in converting emission rates to mass emissions for purposes of calculating a manufacturer's emission credits for certification. One of these methods was based on the EPA transient test cycle and the other on the MOBILE4 emission factor model. The first conversion factor yields a measure of the actual work of the specific engine family in question; the second yields the average work for engine families within the specified engine subclass. For the first conversion factor EPA also asked for a comment on a number of alternatives for determining which configuration should be used for a multi-configuration engine family.

Summary of the Comments

Most of the comments supported the conversion factor based on the transient test cycle as being the most accurate and environmentally appropriate. No clear cut consensus emerged regarding the appropriate alternative for determining the representative configuration for a multi-configuration engine family. Some commenters favored a sales-weighted average of all the configurations in the family, while others preferred one of the other alternatives proposed.

EPA Response to the Comments

EPA agrees with the majority of the commenters that the equation based on the transient test cycle is the most appropriate choice from an environmental standpoint for uses in making the conversion to mass emissions. Similarly, as was discussed above, EPA believes that the best approach for multiple configuration families is to base the family's conversion factor on the configuration with the highest conversion factor for calculating credit need and the configuration with the lowest conversion factor for determining credit generation. The Agency does not feel that a sales-weighted average is appropriate, since it introduces additional uncertainty into the credit calculation process. EPA believes it is necessary to define the conversion factor for each family prior to certification and the generation or use of credits, which would not be possible using the sales-weighted average approach. It is also worth noting that use of a conversion factor based on a sales-weighting of the configuration values is unworkable, based on current EPA regulations regarding test vehicles and engines, and is akin to configuration-based averaging, an approach rejected by the Agency during the original rulemaking regarding heavy-duty engine emissions averaging.

E. Nature of the Banking Program

EPA proposed two alternative banking programs. One was a transition program, centered around the 1991 and 1994 emission standards, designed to ease the transition to the more stringent standards. The other was a five-year rolling program, not tied to any changes in emission standards, that was designed to enhance and provide an incentive for the development of advanced emission control technology. For the rolling program, EPA also

requested comment on year-by year depreciation of banked credits to assure the necessary overlap between credit-generating and credit-using engines in the fleet to avoid temporary increases in in-use emissions.

Summary of the Comments

Most of the comments received supported a banking program; however, opinion was divided over whether it should be a fixed or a rolling program. Although the majority of the commenters appeared to favor a rolling program, a substantial minority supported only a transition program. Opinion was also split over depreciation of credits. The majority of industry commenters were opposed to any depreciation of credits, although one of the smaller manufacturers felt credit depreciation would provide an incentive for trading and make stockpiling credits less attractive. A number of commenters found limiting credit life more attractive than credit depreciation. Many of the commenters favored extending credit life to six years, rather than five years as proposed, to provide incentives for the development of cleaner emission control technology.

A number of commenters believed that credit generation should be made retroactive to the beginning of the 1990 model year regardless of the effective date of the Final Rule. The Engine Manufacturers Association/Motor Vehicle Manufacturers Association (EMA/MVMA) and Detroit Diesel Corporation (DDC) comments suggested administrative procedures through which this could be accomplished.

Response to the Comments

After due consideration, EPA has decided to implement a banking program that combines the two alternatives that were proposed. There will be both a transition program tied to the introduction of new emission standards and a three-year rolling program, not tied to the standards. These follow the proposal, with a few exceptions. First, the credit usage period is extended to three years for the transition program, rather than two as proposed, and the rolling program has a credit life of three years, instead of five as discussed in the proposal. As is discussed above, most commenters preferred limiting credit life over incorporating depreciation into the banking program. Consistent with the discussion in the NPRM, EPA has selected a three-year credit life to assure adequate in-use overlap between credit-generating and using vehicles. Second, all credits generated for banking (and trading) will be subject to an initial discount of 20 percent. Third, the criteria for 1990 eligibility are that the NO_x/PM certified levels for all configurations within a family must not only be below the 1990 NO_x/PM standards, but also below a level equivalent to half or more of the reduction required by the 1991 NO_x/PM (non-urban bus) standards or which are held to FELs of 5.7 g/BHP-hr for NO_x and/or 0.49g/BHP-hr for PM. These are to be applied on a pollutant-specific basis. A full description of these programs can be found in section II. EPA believes this combined program will provide direct environmental benefits, give the manufacturers more flexibility in meeting the new standards as well as encourage the development of advanced emission control technology and the accompanying environmental benefits.

With respect to the credit retroactivity issue for the 1990 model year, EPA will allow credit generation from eligible engine families in production prior to the effective date of the regulation only if the manufacturer agrees to hold all engines produced under banking to the specified FEL for that family and to comply with all other provisions of this rule for these engines. In order to be eligible for retroactive credits for the 1990 model year, the manufacturer's letter of intent/application to participate must be submitted to EPA within 30 days after the effective date of the rule.

F. Effect on Competition

Summary of the Comments

Some commenters suggested that trading was anti-competitive, since large manufacturers would likely be reluctant to trade credits, particularly with smaller firms, and that firms with a limited product line would be able to make only limited use of the programs. One commenter argued that inclusion of HDGEs with HDDEs and allowing methanol buses to participate in the NO_x averaging, trading and banking program were anti-competitive, since they benefited only one or two manufacturers.

EPA Response to the Comments

The purpose of trading is to extend the benefits of the averaging concept to manufacturers with limited product lines. Larger, more diverse manufacturers will benefit from the averaging programs already in place. And, while EPA cannot force manufacturers to trade credits, at least the regulatory provisions promulgated here create a mechanism for trading which did not exist before. Most certainly it cannot be argued that trading hurts smaller manufacturers; at worst it is neutral. EPA believes that averaging and trading programs are structured as well as possible to prevent any adverse equity or competitive effects. As was discussed above, this concern is the basis for many of the restrictions incorporated into the programs. EPA has decided not to finalize the proposed HHDE engine class that would have permitted cross-cycle exchanges, in part because of the concerns expressed by the commenters.

IV. Statutory Authority and Procedure

EPA relies on its broad authority under sections 202, 206(a)(1), 207, 208, and 301(a) of the Clean Air Act to implement the provisions contained in today's notice.

While some changes have been made in the Final Rule from the proposal, the Agency believes these changes do not warrant reproposal. The changes were a logical outgrowth of the proposal and comments. Furthermore, it is in the public interest to finalize the rule as soon as possible in order to enable manufacturers to be able to make their plans for complying with the 1991 emission standards.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12291 a Regulatory Impact Analysis is required for all major regulations, *i.e.*, those having an annual effect on the economy of $100 million or a major price increase. Neither of these results is anticipated, in fact, this regulation is expected to provide an overall cost saving. I, therefore, certify that today's action does not fit the criteria and does not constitute a major regulation.

This regulation has been submitted to OMB for review as required by Executive Order 12291. Written comments and EPA responses to those comments are in the public docket.

VI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires that the Administrator certify that this regulation will not affect a substantial number of small business entities. None of the heavy-duty engine manufacturers can be considered small business entities. Moreover, as discussed above, the regulation is expected to provide a financial benefit to manufacturers of all sizes. I, therefore, certify that this rule will not have a significant adverse impact on a substantial number of small business entities.

VII. Information Collection Requirements

Information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB Control No. 2060-0104.

The public reporting burden for collection of information is estimated to average 13 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, completing and reviewing the collection of information.

Send comments regarding the burden estimate or any aspect of this information collection requirement to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 3, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the Preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—[AMENDED]

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301a, Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

2. The table of contents of subpart A of part 86 is republished for the convenience of the reader to read as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Heavy-Duty Vehicles

3. The table of contents of subpart L of part 86 is republished for the convenience of the reader to read as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

4. Section 86.090–2 of subpart A is amended by revising the entire section to read as follows:

§ 86.090–2 Definitions.

The definitions in § 86.088–2 remain effective. The definitions in this section apply beginning with the 1990 model year.

Averaging for heavy-duty engines means the exchange of NO_x and particulate emission credits among engine families within a given manufacturer's product line.

Averaging set means a subcategory of heavy-duty engines within which engine families can average and trade emission credits with one other.

Banking means the retention of heavy-duty engine NO_x and particulate emission credits, by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

Composite particulate standard, for a manufacturer which elects to average light-duty vehicles and light-duty trucks together in either the petroleum-fueled or methanol-fueled light-duty particulate averaging program, means that standards calculated using the following equation and rounded to the nearest one-hundredth (0.01) of a gram per mile:

$$(PROD_{LDV})\ \frac{(STD_{LDV}) + (PROD_{LDT})}{(PROD_{LDV}) + (PROD_{LDT})}\ (STD_{LDT}) = \text{Manufacturer composite particulate standard}$$

Where:

$PROD_{LDV}$ represents the manufacturer's total petroleum-fueled diesel or methanol-fueled diesel light-duty vehicle production for those engine families being included in the appropriate average for a given model year.

STD_{LDV} represents the light-duty vehicle particulate standard.

$PROD_{LDT}$ represents the manufacturer's total petroleum-fueled diesel or methanol-fueled diesel light-duty truck production for those engine families being included in the appropriate average for a given model year.

STD_{LDT} represents the light-duty truck particulate standard.

Diesel means type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle during normal operation is indicative of a diesel engine.

Emission credits mean the amount of emission reductions or exceedances, by a heavy-duty engine family, below or above the emission standard, respectively. Emission credits below the standard are considered as "positive credits," while emission credits above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected U.S. production volume of the engine family. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual U.S. production volumes as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end of year reports or any subsequent audit actions uncover problems or errors.

Family emission limit (FEL) means an emission level declared by the manufacturer which serves in lieu of an emission standard for certification purposes in any of the averaging, trading, or banking programs. FELs must be expressed to the same number of decimal places as the applicable emission standard. The FEL for an engine family using NO_x or particulate NCPs must equal the value of the current NO_x or particulate emission standard.

Flexible fuel vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on a petroleum fuel, a methanol fuel, or any mixture of the two.

Methanol-fueled means any motor vehicle or motor vehicle engine that is engineered and designed to be operated using methanol fuel (*i.e.,* a fuel that contains at least 50 percent methanol (CH_3OH) by volume) as fuel. Flexible fuel vehicles are methanol-fueled vehicles.

Non-oxygenated hydrocarbon means organic emissions measured by a flame ionization detector, excluding methanol.

Organic Material Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in a gas sample, expressed as gasoline fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

Otto-cycle means type of engine with operating characteristics significantly similar to the theoretical Otto combustion cycle. The use of a throttle during normal operation is indicative of an Otto-cycle engine.

Primary intended service class means:

(a) The primary service application group for which a heavy-duty diesel engine is designed and marketed, as

determined by the manufacturer. The primary intended service classes are designated as light, medium, and heavy heavy-duty diesel engines. The determination is based on factors such as vehicle GVW, vehicle usage and operating patterns, other vehicle design characteristics, engine horsepower, and other engine design and operating characteristics.

(1) Light heavy-duty diesel engines usually are non-sleeved and not designed for rebuild; their rated horsepower generally ranges from 70 to 170. Vehicle body types in this group might include any heavy-duty vehicle built for a light-duty truck chassis, van trucks, multi-stop vans, recreational vehicles, and some single axle straight trucks. Typical applications would include personal transportation, light-load commercial hauling and delivery, passenger service, agriculture, and construction. The GVWR of these vehicles is normally less than 19,500 lbs.

(2) Medium heavy-duty diesel engines may be sleeved or non-sleeved and may be designed for rebuild. Rated horsepower generally ranges from 170 to 250. Vehicle body types in this group would typically include school buses, tandem axle straight trucks, city tractors, and a variety of special purpose vehicles such as small dump trucks, and trash compactor trucks. Typical applications would include commercial short haul and intra-city delivery and pickup. Engines in this group are normally used in vehicles whose GVWR varies from 19,500–33,000 lbs.

(3) Heavy heavy-duty diesel engines are sleeved and designed for multiple rebuilds. Their rated horsepower generally exceeds 250. Vehicles in this group are normally tractors, trucks, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 lbs. GVWR.

Production weighted particulate average means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the light-duty particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing those terms, and dividing the sum by the total production of the effected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area.

Throttle means a device used to control an engine's power output by limiting the amount of air entering the combustion chamber.

Trading means the exchange of heavy-duty engine NOx or particulate emission credits between manufacturers.

Useful life means:

(a) For light-duty vehicles a period of use of 5 years or 50,000 miles, whichever first occurs.

(b) For a light-duty truck engine family, a period of use of 11 years or 120,000 miles, whichever occurs first.

(c) For an Otto-cycle heavy-duty engine family, a period of use of 8 years of 110,000 miles, whichever first occurs.

(d) For a diesel heavy-duty engine family:

(1) For light heavy-duty diesel engines, period of use of 8 years or 110,000 miles, whichever first occurs.

(2) For medium heavy-duty diesel engines, a period of use of 8 years or 185,000 miles, whichever first occurs.

(3) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs.

(e) As an option for both light-duty truck and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of paragraph (f) of § 86.090–21.

(f) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles whichever first occurs, for light-duty trucks, Otto cycle heavy-duty engines and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period is 5 years/100,000 miles, whichever first occurs. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

5. Section 86.090–3 of subpart A is amended by revising the entire section to read as follows:

§ 86.090–3 Abbreviations.

(a) The abbreviations in § 86.078–3 remain effective. The abbreviations in this section apply beginning with the 1990 model year.

(b) The abbreviations in this section apply to this subpart, and also to subparts B, E, F, M, N, and P of this part, and have the following meanings:

DNPH—2,4-dinitrophenylhydrazine.
FEL—Family emission limit.
GC—Gas chromatograph.
HPLC—High-pressure liquid chromatography.
MeOH—Methanol (CH_3OH).
Mg—Megagram(s) (1 million grams)
MJ—Megajoule(s) (1 million joules)
OMHCE—Organic Material Hydrocarbon Equivalent.
UV—Ultraviolet.

6. A new § 86.090–7 is added to subpart A to read as follows:

§ 86.090–7 Maintenance of records; submittal of information; right of entry.

(a) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records.

(1) *General records.* (i) The records required to be maintained by this paragraph shall consist of:

(A) Identification and description of all certification vehicles (or certification engines) for which testing is required under this subpart.

(B) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine).

(C) A description of all procedures used to test each certification vehicle (or certification engine).

(ii) A properly filed application for certification, following the format prescribed by the US EPA for the appropriate model year, fulfills each of the requirements of this paragraph (a)(1).

(2) *Individual records.* (i) A brief history of each motor vehicle (or motor vehicle engine) used for certification under this subpart including:

(A) In the case where a current production engine is modified for use in a certification vehicle (or as a certification engine), a description of the process by which the engine was selected and of the modifications made. In the case where the engine for a certification vehicle (or certification engine) is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, experimental heads were cast and machined according to supplied drawings, etc.). In both cases above, a description of the origin and selection process for carburetor, distributor, fuel system components, fuel injection components, emission control system components, smoke exhaust emission control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification vehicle (or certification engine) with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, smoke exhaust emission control system components, vehicle weight or any other devices or components, as applicable, that can reasonably be

expected to influence exhaust or evaporative emissions, as applicable, will be representative of production vehicles (or engines) and that either all components and/or vehicles (or engine) construction processed, component inspection and selection techniques, and assembly techniques employed in constructing such vehicles (or engines) are reasonably likely to be implemented for production vehicles (or engines) or that they are as closely analogous as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle (or the number of hours accumulated on the engine).

(C) The date of each mileage (or service) accumulation run, listing the mileage (or number of operating hours) accumulated.

(D) [Reserved]

(E) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(F) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(G) [Reserved]

(H) A brief description of any significant events affecting the vehicle (or engine) during any time in the period covered by the history not described by an entry under one of the previous headings including such extraordinary events as vehicle accidents (or accidents involving the engine) or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification vehicle (or engine), shall be updated each time the operational status of the vehicle (or engine) changes or additional work is done on it, and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of six (6) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, etc., depending on the record retention procedures of the manufacturer; *Provided,* That in every case all the information contained in the hard copy shall be retained.

(b) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards prescribed in this subpart shall submit to the Administrator at the time of issuance by the manufacturer copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such vehicle (or engine) relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers; *Provided,* That any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new vehicle or engine that is certified under any of the averaging or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such vehicle (or engine) produced:

(i) EPA engine family.

(ii) Vehicle (or engine) identification number.

(iii) Vehicle (or engine) model year and build date.

(iv) BHP rating (heavy duty engines only).

(v) Purchaser and destination.

(vi) Assembly plant.

(2) The manufacturer (or contractor for the manufacturer, if applicable) of any new vehicle or engine family that is certified under averaging or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such family:

(i) EPA engine family.

(ii) FEL.

(iii) BHP conversion factor and the transient test BHP for each configuration tested (heavy-duty engines only).

(iv) Useful life.

(v) Projected U.S. production volume for the model year.

(vi) Actual U.S. production volume for the model year.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of six years from the due date for the end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, etc., depending on the manufacturer's record retention procedure; *Provided,* That in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) EPA may void *ab initio* a certificate of conformity for a vehicle or engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(7) Any engine family using nonconformance penalties (NCPs) must comply with the provisions established in the NCP program provided by 40 CFR part 86, subpart L.

(d)(1) Any manufacturer who has applied for certification of a new motor vehicle (or new motor vehicle engine) subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed.

(ii) Any facility where any new motor vehicle (or new motor vehicle engine) which is being, was, or is to be tested is present.

(iii) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle (or engine) into a certification vehicle (or certification engine) is taking place or has taken place.

(iv) Any facility where any record or other document relating to any of the above is located.

(v) Any facility where any record or other document relating to the information specified in paragraph (c) is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle (or engine) preconditioning, emissions tests and mileage (or service) accumulation, maintenance, and vehicle soak and

storage procedures (or engine storage procedures), and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in paragraph (c); and

(iii) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production motor vehicles (or production motor vehicle engines) conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles (or engines) described in the application for certification for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or any EPA authorized representative on presentation of credentials to both:

(i) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production vehicles (or production engines) is located or carried on; and

(ii) Any facility where any motor vehicles (or motor vehicle engines) to be introduced into commerce are manufactured or assembled.

(iii) Any facility where records specified in paragraph (c) are located.

(4) On admission to any such facility referred to in paragraph (d)(4) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such new motor vehicles (or new motor vehicle engines) and any component used in the assembly thereof that are reasonably related to the purpose of his entry; and

(iv) To inspect and make copies of any records and documents specified in paragraph (c) of this section.

(5) Any EPA Enforcement Officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this paragraph:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(ii) Where vehicle, component, or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation.

(8) EPA may void *ab initio* a certificate of conformity for vehicle or engine families introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

(e) EPA Enforcement Officers or EPA authorized representatives are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers or EPA authorized representatives may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(f) A manufacturer shall permit EPA Enforcement Officers or EPA authorized representatives who present a warrant or court order as described in paragraph (e) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or facility operated for its benefit to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers or EPA authorized representatives may conduct activities related to entry and access as authorized in this section only upon the

consent of the manufacturer or the party in charge of the facilities in question.

(g) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section without a warrant or court order.

7. Section 86.090–10 of subpart A is amended by revising paragraphs (a)(1)(i)(C), (a)(1)(ii)(C), (a)(1)(iii)(C), and (a)(1)(iv)(C) to read as follows:

§ 86.090–10 Emission standards for 1990 and later model year Otto-cycle heavy-duty engines and vehicles.

(a)(1) * * *

(i) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its eligible gasoline-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(ii) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its eligible gasoline-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iii) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its eligible methanol-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iv) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its eligible methanol-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

* * * * *

8. Section 86.090–11 of subpart A is amended by revising paragraphs (a)(1)(iii) and (a)(1)(iv) to read as follows:

§ 86.090–11 Emission standards for 1990 and later model year diesel heavy-duty engines and vehicles.

(a)(1) * * *

(iii) *Oxides of nitrogen.* (A) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include some or all of its eligible diesel heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iv) *Particulate emissions.* (A) 0.60 gram per brake horsepower-hour (0.22 gram per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include some or all of its eligible diesel heavy-duty engine families in the particulate banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the particulate FELs may not exceed 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

* * * * *

9. A new § 86.090–15 is added to subpart A to read as follows:

§ 86.090–15 NO_x and particulate banking for heavy-duty engines.

(a)(1) This section applies only to 1990 model year heavy-duty engines. Credits generated for averaging, trading, or banking during the 1991 and subsequent model years are discussed in § 86.091–15. Manufacturers desiring to participate in the NO_x and/or particulate banking programs described in this subpart must demonstrate to the Administrator's satisfaction that the participating engine families for which they desire credits represent significant technological advances over similar engine families certified under this subpart in prior model years. Individual engine families are eligible to participate in the 1990 banking program if either

(i) the NO_x/PM certification level of the highest-emitting configuration within that engine family is at or below a point which represents 50 percent of the reduction in emissions levels required by the 1991 emission standards (as compared to the 1990 standards). Thus, the NO_x/PM certified emission level must be at or below 5.5 g/BHP-hr for NO_x and 0.42 g/BHP-hr for particulate (rounded according to ASTM E29–67), or

(ii) the manufacturer declares an FEL no higher than 5.7 g/BHP-hr for NO_x or 0.49 g/BHP-hr for PM, and complies with all the other provisions of paragraph (b) of this section. Certification levels may not be greater than the above FEL limits. The manufacturer must submit evidence acceptable to the Administrator, such as SEA test data, internal emission audit data or equivalent reliable information, to show that the certification level for the family is not representative of production engine emission levels for that family. If other than SEA data are submitted (*e.g.*, internal audit data), emission data from a minimum of five randomly-selected engines must be submitted. These engines are to be chosen in accordance with accepted statistical sampling techniques. The sampling criteria used shall be included with the manufacturer's data submission. The FEL may be set no lower than the highest emission level in the sample data.

(2) If the family has undergone SEA prior to officially establishing the FEL, the FEL may be set no lower than the test results for the highest-emitting engine within the family/ configuration, unless the manufacturer conducts sufficient additional testing to show that the audit configuration would pass the SEA when tested to that FEL.

(3) The above conditions are to be applied on a pollutant-specific basis, meaning that manufacturers can be eligible to bank credits for NO_x or PM, or both. If an engine family meets either of the above eligibility criteria, then credits can be banked from the FEL to the standard.

(4) A manufacturer may change a previously-declared FEL after production of the engine has begun. However, if the revised FEL is not based on existing initial certification data, credits for prior production may not be

based on the new FEL, but rather must be based on the previous FEL. Credits for subsequent production will be based on the revised FEL. All engines produced are to be labeled with the appropriate FEL.

(5) During the 1990 model year, manufacturers will only be allowed to bank NO_x and particulate emission credits generated by participating eligible engine families. Credits may be generated by eligible 1990 model year engines produced prior to the effective date of these regulations, provided the manufacturer complies with the provisions of paragraph (d) of this section. Credits may not be used for averaging or trading during the 1990 model year or to offset emissions that exceed an FEL. Credits may not be used to remedy a nonconformity determined by a Selective Enforcement Audit or by in-use testing.

(6) Beginning in the 1991 model year, credits banked in 1990 may be used in averaging, or in trading, or in any combination thereof, for the certification of engine families in the same averaging set and regional category as the generating engine family. Engines produced for sale in California constitute a separate regional category from engines produced for sale in the other 49 states. Banking is not available for engines sold in California. The averaging sets for heavy-duty engines are defined in § 86.091–15.

(7) NO_x or particulate emission credits generated for banking, from 1990 model year heavy duty engines may be used in the certification of 1991, 1992 or 1993 model year heavy-duty engines within the constraints described in paragraph (a)(3) of this section. Credits not used by the end of the 1993 model year reporting period (close of production plus 90 days) shall be forfeited for future use.

(b) Participation in the NO_x and/or particulate banking program shall be as follows:

(1) During certification, or at other times provided in these regulations, the manufacturer shall:

(i) Declare its intent to include specific engine families in the NO_x and/or particulate banking programs. The declaration shall provide justification for inclusion of each engine family in the NO_x and/or particulate banking programs as discussed in paragraph (a) of this section.

(ii) Declare an FEL for each engine family participating in the banking program, and agree to label all 1990 model year engines produced for each participating engine family with the appropriate FEL.

(A) The FEL must be to the same level of significant digits as the emissions standard (one-tenth of a gram per brake horsepower-hour for NO_x emissions and one-hundredth of a gram per horsepower-hour for particulate emissions.)

(B) In no case may the FEL exceed the applicable emission standard for 1990 model-year engines.

(iv) Calculate and report, as described in § 86.090–23, the projected emission credits, using the equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(2) Upon certification, the manufacturer will be allowed to produce and sell engines in the certified engine family. Actual credits generated by the production of engines will be considered reserved during the model year.

(3) At the end of the model year, manufacturers shall report to EPA the actual number of engines produced and the number of reserved credits, as described in § 86.090-23, to enable the credits to be banked for future use as described in paragraph (a)(4) of this section.

(4) Within the restrictions of the applicable (NO_x or particulate) banking program:

(i) Manufacturers may indicate the intention to use (through averaging or trading) reserved credits during the certification of 1991 model year engine families whose FELs exceed the emission standard. However, these will be considered banked credits and will be subject to the one-time 20 percent discount factor discussed in paragraph (c) of this section.

(ii) The number of banked credits used for future model year engine families will be dependent on the actual U.S. production volume of those engines, subject to EPA review.

(5) If EPA or the manufacturer determines that a reporting error occurred on a report previously submitted to EPA under this section, the manufacturer's credits and credit calculations may be recomputed.

(i) Erroneous positive credits will not be available for use. If the FEL for the family is exceeded, the certificate of conformity for that engine family shall be voided *ab initio*.

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.*, resulting in a positive credit increase), or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the additional credits will be available for use by the manufacturer. Positive credits identified after that time will be forfeited.

(c)(1) For each participating engine family, emission credits are to be calculated according to the following equation and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

$$\text{Emission credits} = (\text{Std-FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6}) \times (0.8)$$

Where:

Std = the current and applicable heavy-duty engine NO_x or particulate emission standard (as applicable) in grams per brake horsepower-hour or grams per Megajcule.

FEL = the NO_x or particulate family emission limit (as applicable) for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life, or alternative useful life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year, based on the criteria described in § 86.090–23.

0.8 = a one-time discount applied to all banked credits. All credits generated by 1990 HDE engine families under these provisions shall be subject to this one-time discount. Banked credits traded in a subsequent model year will not be subject to a further discount. Banked credits used in a subsequent model years averaging program will not have the discount restored.

(2) The transient cycle conversion factor is the total (integrated) cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the configuration generating the highest conversion factor when determining credit need for a family and the lowest conversion factor when determining credit availability from a family for banking, trading or averaging. Engine families with more than one configuration as of the effective date of this final rule may not be split into two or more single-configuration engine families for the purposes of generating credits for banking without the prior approval of the Administrator. Without such approval, separate certification of these configurations is permitted; however, credit generation for banking will not be permitted.

(d)(1) Credits may be generated by eligible 1990 model year engine families produced prior to the effective date of this regulation. If the manufacturer has

already received a certificate of conformity for the engine family in question, it shall request that EPA void the existing certificate and issue a new conditional certificate (covering the entire production year) based on the manufacturer's declared FEL.

(2) All engines covered by the new certificate shall be accountable to the FEL whether they were produced before or after the issue date of the new conditional certificate. The manufacturer shall make every reasonable attempt to label all past production with an engine label which specifies the FEL as described in § 86.090–35. If the manufacturer undergoes Selective Enforcement Audit (SEA) prior to the effective date of this regulation, no FEL for a banking program shall be lower than the highest test results for that pollutant determined in that SEA, unless the manufacturer conducts sufficient additional testing to show that the audit configuration would pass the SEA when tested to that FEL.

(e) Manufacturers may not generate either NO_x or particulate credits from any engine family using NO_x or particulate NCPs.

(f) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the engine purchaser. Therefore, upon request by the Administrator, the engine manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and will be used in customer service.

10. Section 86.090–21 of subpart A is amended by adding paragraph (b)(5)(iii) to read as follows:

§ 86.090–21 Application for certification.

* * * * *

(b) * * *

(5) * * *

(iii) If the manufacturer elects to participate in any of the particulate and/or the NO_x banking programs for heavy-duty engines, the application must list the information required in §§ 86.091–15 and 86.090–23.

* * * * *

11. Section 86.090–23 of subpart A is amended by adding paragraphs (h) and (i) to read as follows:

§ 86.090–23 Required data.

* * * * *

(h) Additionally, manufacturers participating in the NO_x and/or particulate banking programs for heavy-duty engines shall submit for each participating engine family:

(1) In the application for certification: A justification as to why this family should be eligible to generate credits. The type (NO_x or particulate) and the projected number of credits generated for this family, the applicable averaging set, the projected U.S. production volumes, NCPs in use on a similar family and the values required to calculate credits as given in § 86.090–15. The application must project that each engine family will be in compliance with the applicable NO_x and/or particulate emission standards.

(2) End-of-year reports for each engine family participating in any of the banking programs.

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. (49-state) production volume, the values required to calculate credits as given in § 86.090–15, and the resulting type (NO_x or particulate) and number of credits generated for banking, and the NCPs in use on a similar NCP family. The report shall also include a calculation of credit balances, including the one-time discount.

(iii) The 49-state production counts for end-of-year reports shall be based on the location of the point of first retail sale (*e.g.*, customer, secondary manufacturer, or dealer) by the manufacturer.

(iv) Errors discovered by EPA or by the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected up to 90 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 90 days shall be corrected if credit balances are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 90-day correction period allowed.

(i) Failure by a manufacturer participating in either the HDE NO_x or particulate banking programs to submit their end-of-year reports, within the specified time (*i.e.*, 90 days), shall result in the credits not being available for use until such reports are received *and* reviewed, and may result in the certificate(s) for the affected engine family(ies) being void *ab initio* plus any applicable civil penalties for failure to submit the required information to the Agency. Use of projected credits pending EPA review will not be permitted in these circumstances.

12. Section 86.090–24 of subpart A is amended by adding paragraph (a) (16) and (17).

§ 86.090–24 Test vehicles and engines.

(a) * * *

(16) No 1990 or later model year heavy-duty engine which is to be used to generate emission credits for 1991 and later banking, trading and averaging programs may also utilize nonconformance penalties (NCPs). Use of an NCP thus becomes an engine family criterion.

(i) Use of either a NO_x or a particulate matter NCP by an engine family precludes that family from generating both NO_x and particulate matter emission credits.

(ii) If a manufacturer desires to use both banked credits and NCPs on an engine family, two separate engine families must be established. One engine family must consist of engines certified for only credit use following the procedure specified in this subpart. The other engine family must be certified for only NCP use following the procedure as specified in 40 CFR part 86, subpart L.

(17) Any 1990 or later model year urban bus engines which are to be used to generate PM credits for the 1991 and later model year urban bus PM standard shall be placed in separate engine families for certification purposes and the families shall be clearly designated as such in the application. Urban bus engines of different basic design will not be in the same family. If a manufacturer certifies two or more different urban bus engines these shall be in different engine families.

* * * * *

13. Section 86.090–30 of subpart A is amended by revising paragraphs (a)(1)(i), (a)(10), (a)(11), (b)(3), (c)(1)(iii) introductory text, (c)(1)(iv) and (c)(4) to read as follows:

§ 86.090–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.090–7(d), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

* * * * *

(10)(i) For diesel light-duty vehicle and diesel light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not

exceed the applicable diesel particulate standard or the composite particulate standard defined in § 86.090–2 determined as appropriate, at the end of the model year, as in accordance with 40 CFR part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel engines which are included in the particulate banking program under § 86.090–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.090–15 and the banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.090–15 may result in EPA not allowing use of the credits.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all heavy-duty engines which are included in the NO_x banking program under § 86.090–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.090–15 and the banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.090–15 may result in EPA not allowing the use of the credits.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(b) * * *

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.090–29, data or information derived from any inspection carried out under § 86.090–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

* * * * *

(c) * * *

(1) * * *

(iii) Any EPA Enforcement Officer or authorized representative is denied access on the terms specified in § 86.090–7(d) to any facility or portion thereof which contains any of the following:

* * * * *

(iv) Any EPA Enforcement Officer or authorized representative is denied "reasonable assistance" (as defined in § 86.090–7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

* * * * *

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.090–7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

* * * * *

14. Section 86.090–35 of subpart A is amended by adding paragraphs (a)(3)(iii)(L) and (a)(3)(iii)(M) to read as follows:

§ 86.090–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(L) For all heavy-duty engines which are included in the particulate banking program, the particulate family emission limit to which the engine is certified.

(M) For all heavy-duty engines which are included in the NO_x banking program, the NO_x family emission limit to which the engine is certified.

* * * * *

15. Section 86.091–2 of subpart A is amended by revising the entire section to read as follows:

§ 86.091–2 Definitions.

The definitions of § 86.090–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

Urban bus means a heavy heavy-duty diesel-powered passenger-carrying vehicle with a load capacity of fifteen or more passengers and intended primarily for intra-city operation, *i.e.*, within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or tokens rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, *e.g.*, rest rooms, large luggage compartments, and facilities for stowing carry-on luggage. The useful life for urban buses is the same as the useful life for other heavy heavy-duty diesel engines.

16. A new § 86.091–7 is added to subpart A to read as follows:

§ 86.091–7 Maintenance of records; submittal of information; right of entry.

(a) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records.

(1) *General records.* (i) The records required to be maintained by this paragraph shall consist of:

(A) Identification and description of all certification vehicles (or certification engines) for which testing is required under this subpart.

(B) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine).

(C) A description of all procedures used to test each such certification vehicle (or certification engine).

(ii) A properly filed application for certification, following the format prescribed by the US EPA for the appropriate model year, fulfills each of the requirements of this paragraph (a)(1).

(2) *Individual records.* (i) A brief history of each motor vehicle (or motor vehicle engine) used for certification under this subpart including:

(A) In the case where a current production engine is modified for use in a certification vehicle (or as a certification engine), a description of the process by which the engine was selected and of the modifications made. In the case where the engine for a certification vehicle (or certification engine) is not derived from a current production engine, a general description of the buildup of the engine (*e.g.,* experimental heads were cast and machined according to supplied drawings, etc.). In both cases above, a description of the origin and selection process for carburetor, distributor, fuel system components, fuel injection components, emission control system components, smoke exhaust emission control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification vehicle (or certification engine) with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, smoke exhaust emission control system components, vehicle weight or any other devices or components, as applicable, that can reasonably be expected to influence exhaust or evaporative emissions, as applicable, will be representative of production vehicles (or engines) and that either all components and/or vehicles (or engine) construction processed, component inspection and selection techniques, and assembly techniques employed in constructing such vehicles (or engines) are reasonably likely to be implemented for production vehicles (or engines) or that they are as closely analogous as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle (or the number of hours accumulated on the engine).

(C) The date of each mileage (or service) accumulation run, listing the mileage (or number of operating hours) accumulated.

(D) [Reserved]

(E) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(F) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(G) [Reserved].

(H) A brief description of any significant events affecting the vehicle (or engine) during any time in the period covered by the history not described by an entry under one of the previous headings including such extraordinary events as vehicle accidents (or accidents involving the engine) or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification vehicle (or engine) changes or additional work is done on it, and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of six (6) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, etc., depending on the record retention procedures of the manufacturer; *Provided,* That in every case all the information contained in the hard copy shall be retained.

(b) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards prescribed in this subpart shall submit to the Administrator at the time of issuance by the manufacturer copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such vehicle (or engine) relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers, *Provided,* That any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new vehicle or engine that is certified under averaging, trading, or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such vehicle or heavy-duty engine produced:

(i) EPA engine family.

(ii) Vehicle (or engine) identification number.

(iii) Vehicle (or engine) model year and build date.

(iv) BHP rating (heavy-duty engines only).

(v) Purchaser and destination.

(vi) Assembly plant.

(2) The manufacturer (or contractor for the manufacturer, if applicable) of any new vehicle or engine family that is certified under averaging, trading, or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such family:

(i) EPA engine family.

(ii) FEL.

(iii) BHP conversion factor and the transient test BHP for each configuration tested (heavy-duty engines only).

(iv) Useful life.

(v) Projected U.S. production volume for the model year.

(vi) Actual U.S. production volume for the model year.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of six years from the due date for the end-of-model year averaging, trading, and banking reports. Records may be retained as hard copy or reduced to microfilm, ADP files, etc., depending on the manufacturer's record retention procedure; *Provided,* That in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) EPA may void *ab initio* a certificate of conformity for a vehicle or engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(7) Any engine family using NCPs must comply with the provisions

established in the NCP program provided by 40 CFR part 86, subpart L.

(8) Any manufacturer, producing an engine family participating in trading using reserved credits, shall maintain the following records on a quarterly basis for each engine family in the trading subclass:

(i) The engine family,

(ii) The averaging set,

(iii) The actual quarterly and cumulative U.S. production volumes,

(iv) The value required to calculate credits as given in § 86.091–15,

(v) The resulting type [NO_x or particulate] and number of credits generated/required,

(vi) How and where credit surpluses are dispersed, and

(vii) How and through what means credit deficits are met.

(d)(1) Any manufacturer who has applied for certification of a new motor vehicle (or new motor vehicle engine) subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed.

(ii) Any facility where any new motor vehicle (or new motor vehicle engine) which is being, was, or is to be tested is present.

(iii) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle (or engine) into a certification vehicle (or certification engine) is taking place or has taken place.

(iv) Any facility where any record or other document relating to any of the above is located.

(v) Any facility where any record or other document relating to the information specified in paragraph (c) of this section is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle (or engine) preconditioning, emissions tests and mileage (or service) accumulation, maintenance, and vehicle soak and storage procedures (or engine storage procedures), and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in paragraph (c) of this section; and

(iii) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production motor vehicles (or production motor vehicle engines) conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles (or engines) described in the application for certification for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or any EPA authorized representative on presentation of credentials to both:

(i) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production vehicles (or production engines) is located or carried on;

(ii) Any facility where any motor vehicles (or motor vehicle engines) to be introduced into commerce are manufactured or assembled; and

(iii) Any facility where records specified in paragraph (c) of this section are located.

(4) On admission to any such facility referred to in paragraph (d)(4) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such new motor vehicles (or new motor vehicle engines) and any component used in the assembly thereof that are reasonably related to the purpose of his entry; and

(iv) To inspect and make copies of any records and documents specified in paragraph (c) of this section.

(5) Any EPA Enforcement Officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this paragraph:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(ii) Where vehicle, component, or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be

compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation.

(8) EPA may void *ab initio* a certificate of conformity for vehicle or engine families introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

(e) EPA Enforcement Officers or EPA authorized representatives are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers or EPA authorized representatives may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(f) A manufacturer shall permit EPA Enforcement Officers or EPA authorized representatives who present a warrant or court order as described in paragraph (e) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or facility operated for its benefit to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers or EPA authorized representatives may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(g) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section without a warrant or court order.

17. Section 86.091–10 of subpart A is amended by revising paragraphs (a)(1)(i)(C)(*2*), (a)(1)(ii)(C)(*2*), (a)(1)(iii)(C)(*2*), and (a)(1)(iv)(C)(*2*) to read as follows:

§ 86.091–10 Emission standards for 1991 and later model year Otto-cycle heavy-duty engines and vehicles.

(a)(1) * * *

(i) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle heavy duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading, or banking programs.

(ii) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iii) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

18. Section 86.091–11 of subpart A is amended by revising paragraphs (a)(1)(iii)(B) and (a)(1)(iv)(C) to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines and vehicles.

(a)(1) * * *

(iii) * * *

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) * * *

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the particulate FELs may not exceed 0.60 gram per brake horsepower-hour (0.22 gram per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

19. A new § 86.091–15 is added to subpart A to read as follows:

§ 86.091–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for the NO_x and particulate averaging, trading, and banking programs are described in the applicable emission standards sections in this subpart.

Participation in these programs is voluntary.

(2)(i) Engine families with FELs exceeding the applicable standard shall obtain emission credits in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, within the averaging set restrictions described in this section.

(ii) Engine families with FELs below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(iii) Engine families within a given averaging set may not both generate and use like emission credits in the same model year. This restriction is to be applied on a pollutant-specific basis.

(b) Participation in the NO_x and/or particulate averaging, trading, and banking programs shall be done as follows.

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (*i.e.*, NO_x and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these three programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower for NO_x emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_x and particulate emission standards.

(iii) Calculate the projected emission credits (+/−) based on quarterly production projections for each participating family and for each pollutant (NO_x and particulate), using the equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for engine families requiring credits for certification.

(B) State where the quarterly projected credits will be applied for engine families generating credits.

(C) Credits may be obtained from or applied to only engine families within the same averaging set as described in paragraphs (d) and (e) of this section. Credits available for averaging, trading, or banking as defined in § 86.090–2, may be applied to a given engine famil(y)(ies), or reserved as defined in § 86.091–2.

(2) Based on this information each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each engine family has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each engine family involved must state specifically the source (manufacturer/engine family) of the credits being used. In cases where credits are being generated/supplied, each engine family involved must state specifically the designated use (manufacturer/engine family or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end of-model year reports required under § 86.091–23.

(iii) Maintain the quarterly records required under § 86.091–7(c)(3).

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Engine families without an adequate amount of actual NO_x and/or particulate emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided *ab initio* for those engine families.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be adjusted by EPA.

(i) If EPA review of a manufacturer's end-of-year report indicates an inadvertent credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that engine family to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the engine family in question to zero, EPA may void the certificate for that engine family *ab initio*.

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.*, resulting in a positive credit balance) or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c)(1) For each participating engine family, NO_x and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

For determining credit need for all engine families and credit availability for engine families generating credits for averaging programs only:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

For determining credit availability for engine families generating credits for trading or banking programs:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6}) \times (0.8)$$

Where:

Std = the current and applicable heavy-duty engine NO_x or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_x or particulate family emission limit for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life, or alternative life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.

Production=the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

0.8=a one-time discount applied to all credits to be banked or traded within the model year generated. Banked credits traded in a subsequent model year will not be subject to an additonal discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(2) The transient cycle conversion factor is the total (integrated) cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the configuration generating the highest conversion factor when determining credit need and the lowest conversion factor when determining credit availability for banking, trading or averaging.

(d) *Averaging sets for NO_x emission credits:* The averaging and trading of NO_x emission credits will only be allowed between heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of NO_x emission credits for heavy-duty engines are defined as follows:

(1) For Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Gasoline-fueled heavy-duty vehicles certified under the provisions of § 86.085–1(b) may not average or trade credits with gasoline-fueled heavy-duty Otto-cycle engines, but may average or trade credits with light-duty trucks.

(2) For diesel cycle heavy-duty engines:

(i) Each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading among all diesel cycle engine families within the same primary service class is allowed.

(ii) Urban buses are treated as members of the primary intended service class where they would otherwise fall.

(e) *Averaging sets for particulate emission credits.* The averaging and trading of particulate emission credits will only be allowed between diesel cycle heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of particulate emission credits for diesel cycle heavy-duty engines are defined as follows:

(1) Engines intended for use in urban buses constitute a separate averaging set from all other heavy-duty engines. Averaging and trading among all diesel cycle bus engine families is allowed.

(2) For heavy-duty engines, exclusive of urban bus engines, each of the three primary intended service classes for heavy-duty diesel cycle engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading between diesel cycle engine families within the same primary service class is allowed.

(3) Otto-cycle engines may not participate in particulate averaging, trading, or banking.

(f) Banking of NO_x and particulate emission credits:

(1) *Credit deposits.* (i) Under this phase of the banking program, emission credits may be banked from engine families produced during the three model years prior to the effective model year of the new HDE NO_x or particulate emission standard. Credits may not be banked from engine families made during any other model years.

(ii) Manufacturers may bank credits only after the end of the model year and after EPA has reviewed their end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) After being generated, banked/reserved credits shall be available for use three model years prior to, through three model years immediately after the effective date of the new HDE NO_x or particulate emission standard, as applicable. However, credits not used within the period specified above shall be forfeited.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and other restrictions described in paragraphs (d) and (e) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, they may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(ii) Banked credits may not be used for NOx or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(g)(1) The following paragraphs assume NO_x and particulate nonconformance penalties (NCPs) will be available for the 1991 and later model year HDEs.

(2) Engine families using NO_x and/or particulate NCPs but not involved in averaging:

(i) May not generate either NO_x or particulate credits for banking and trading.

(ii) May not use either NO_x or particulate credits from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs and banking and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only while the other, whose FEL does not equal the standard, must use credits only.

(4) If a manufacturer has any engine family in a given averaging set which is using NO_x and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

(h) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(i) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the engine purchaser. Therefore, upon request by the Administrator, the engine manufacturer must provide information acceptable to the

Administrator that the designated fuel is readily available commercially and would be used in customer service.

20. Section 86.091–21 of subpart A is amended by revising paragraphs (b)(6)(i)(A), (b)(6)(i)(B), (b)(6)(ii)(A), (b)(6)(ii)(B) and adding (b)(6)(iii) to read as follows:

§ 86.091–21 Application of certification.

* * * * *

(b) * * *

(6)(i)(A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, the application must list the particulate FEL and the projected U.S. (49-state) production volume, by quarter, of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile.

* * * * *

(ii)(A) If the manufacturer elects to participate in the NO_x averaging program for light-duty trucks, the application must list the NO_x FEL and the projected U.S. (49-state) production volume, by quarter, of the family for the model year.

(B) The manufacturer shall choose the level of the family NO_x emission limits, accurate to one-tenth of a gram per mile.

* * * * *

(iii) If the manufacturer elects to participate in any of the particulate and/or the NO_x averaging, trading, or banking programs for heavy-duty engines, the application must list the information required in § 86.091–15 and § 86.091 23.

* * * * *

21. Section 86.091–23 of subpart A is amended by revising paragraphs (f) and (g), and adding paragraphs (h), (i), (j) and (k), to read as follows:

§ 86.091–23 Required data.

* * * * *

(f) Additionally, manufacturers participating in the particulate averaging program for diesel light-duty vehicles and diesel light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in one of the diesel particulate averaging programs, the number of vehicles produced in each engine family at each certified particulate FEL, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the NO_x averaging program for light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is required will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_x standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the NO_x averaging program, the number of vehicles produced in each engine family at each certified NO_x emission level.

(h) Additionally, manufacturers participating in any of the NO_x and/or particulate averaging, trading, or banking programs for heavy-duty engines shall submit for each participating family:

(1) In the application for certification:

(i) A statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, when included in any of the averaging, trading, or banking programs cause the applicable NO_x or particulate standard(s) to be exceeded.

(ii) The type (NO_x or particulate) and the projected number of credits generated/needed for this family, the applicable averaging set, the projected U.S. (49-state) production volumes, by quarter, NCPs in use on a similar family and the values required to calculate credits as given in § 86.091–15. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in § 86.091–15. The application must project that each engine family will be in compliance with the applicable NO_x and/or particulate emission standards based on the engine mass emissions, and credits from averaging, trading and banking.

(3) End-of-year reports for each engine family participating in any of the averaging, trading, or banking programs.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. (49-state) production volume, the values required to calculate credits as given in § 86.091–15, the resulting type (NO_x or particulate) and number of credits generated/required, and the NCPs in use on a similar NCP family. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). The credit discount factor described in 86.091–15 must be included as required.

(iii) The 49-state production counts for end-of-year reports shall be based on the location of the first point of retail sale (*e.g.*, customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected up to 90 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 90 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 90 day correction period allowed.

(i) Failure by a manufacturer participating in the averaging, trading, or banking programs to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles and engines that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act for each such vehicle and engine.

(j) Failure by a manufacturer generating credits for deposit only in either the HDE NO_x or particulate banking programs to submit their end-of-year reports in the applicable specified time period (*i.e.*, 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(k) Engine families certified using NCPs are not required to meet the requirements outlined above.

22. Section 86.091–30 of subpart A is amended by revising paragraphs (a)(1)(i), (a)(10), (a)(11), (b)(3), (c)(1)(iii) introductory text, (c)(1)(iv) and (c)(4) to read as follows:

§ 86.091–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any

inspection carried out under § 86.091–7(d), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicles(s) (or engines(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

* * * * *

(10)(i) For diesel light-duty vehicle and diesel light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with 40 CFR part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel engines which are included in the particulate averaging, trading, or banking programs under § 86.091–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.091–15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.091–15 will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio.*

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all heavy duty engines which are included in the NO_x averaging, trading, or banking programs under § 86.091 15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.091–15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.091–15 will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio.*

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(b) * * *

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.090–29, data or information derived from any inspection carried out under § 86.091–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

* * * * *

(c) * * *

(1) * * *

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.091–7(d) to any facility or portion thereof which contains any of the following:

* * * * *

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.091–7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

* * * * *

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.091–7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

* * * * *

23. Section 86.091–35 of subpart A is amended by revising paragraphs (a)(3)(iii)(L) and (a)(3)(iii)(M) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(L) For all heavy-duty engines which are included in the particulate averaging, trading, or banking programs, the particulate family emission limit to which the engine is certified.

(M) For all heavy-duty engines which are included in the NO_x averaging, trading, or banking programs, the NO_x family emission limit to which the engine is certified.

* * * * *

24. Section 86.092–24 of subpart A is amended by adding paragraph (a)(16).

§ 86.092–24 Test vehicles and engines.

(a) * * *

(16) No 1992 or later model year heavy-duty engine which is to be used to generate emission credits for 1992 and later banking, trading and averaging programs may also utilize nonconformance penalties (NCPs). Use of an NCP thus becomes an engine family criterion.

(i) Use of either a NO_x or a particulate matter NCP by an engine family precludes that family from generating either NO_x or particulate matter emission credits.

(ii) If a manufacturer desires to use both banked credits and NCPs on an engine family, two separate engine families must be established. One engine family must consist of engines certified for only credit use following the procedure specified in this subpart. The other engine family must be certified for only NCP use following the procedure as specified in 40 CFR part 86, subpart L.

* * * * *

25. Section 86.092–35 of subpart A is amended by revising paragraphs

(a)(3)(iii)(L) and (a)(3)(iii)(M) to read as follows:

§ 86.092-35 Labeling.

(a) * * *
(3) * * *
(iii) * * *

(L) For all heavy-duty engines which are included in diesel heavy-duty particulate trading, banking or averaging programs, the particulate family emission limit to which the engine is certified.

(M) For all heavy-duty engines which are included in NO_x trading, banking or averaging programs, the NO_x family emission limit to which the engine is certified.

* * * * *

28. Section 86.094-11 of subpart A is amended by revising paragraph (a)(1)(iv)(B) to read as follows:

§ 86.094-11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.

(a)(1) * * *
(iv) * * *

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094-15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.60 gram per horsepower (0.22 gram per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

27. A new § 86.094-15 is added to subpart A to read as follows:

§ 86.094-15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for the NO_x and particulate averaging, trading, and banking programs are described in the applicable emission standards sections in this subpart. Participation in these programs is voluntary.

(2)(i) Engine families with FELs exceeding the applicable standard shall obtain emission credits in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, within the averaging set restrictions described in this section.

(ii) Engine families with FELs below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(iii) Engine families within a given averaging set may not both generate and use like emission credits in the same model year. This restriction is to be applied on a pollutant-specific basis.

(b) Participation in the NO_x and/or particulate averaging, trading, and banking programs shall be done as follows.

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (*i.e.*, NO_x and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these three programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower for NO_x emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_x and particulate emission standards.

(iii) Calculate the projected emission credits (+/−) based on quarterly production projections for each participating family and for each pollutant (NO_x and particulate), using the applicable equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for engine families requiring credits for certification.

(B) State where the quarterly projected credits will be applied for engine families generating credits.

(C) Credits may be obtained from or applied to only engine families within the same averaging set as described in paragraphs (d) and (e) of this section. Credits available for averaging, trading, or banking as defined in § 86.090-2, may be applied exclusively to a given engine family, or reserved as defined in § 86.091-2.

(2) Based on this information each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each engine family has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each engine family involved must state specifically the source (manufacturer/engine family) of the credits being used. In cases where credits are being generated/supplied, each engine family involved must state specifically the designated use (manufacturer/engine family or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-model year reports required under § 86.091-23.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under § 86.091-7(c)(8).

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Engine families without an adequate amount of NO_x and/or particulate emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided *ab initio* for engine families exceeding the emission standard.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative balances may be adjusted by EPA for retroactive use.

(i) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that engine family to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the engine family in question to zero, EPA may void the certificate for that engine family *ab initio.*

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.,* resulting in a positive credit balance), or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c)(1) For each participating engine family, NO_x and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

For determining credit need for all engine families and credit availability for engine families generating credits for averaging programs only:

Emission credits = (Std FEL) × (CF) × (UL) × (Production) × (10^{-6})

For determining credit availability for engine families generating credits for trading or banking programs:

Emission credits = (Std FEL) × (CF) × (UL) × (Production) × (10^{-6}) × (0.8)

Where:

Std = the current and applicable heavy-duty engine NO_x or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_x or particulate family emission limit for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life, or alternative life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

0.8 = a one-time discount applied to all credits to be banked or traded within the model year generated. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(2) The transient cycle conversion factor is the total (integrated) cycle brake horsepower- hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle-heavy duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the configuration generating the highest conversion factor when determining credit need for a family and the lowest conversion factor when determining credit availability from a family for banking, trading and averaging.

(d) *Averaging sets for NO_x emission credits:* The averaging and trading of NO_x emission credits will only be allowed between heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of NO_x emission credits for heavy-duty engines are defined as follows:

(1) For Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Gasoline-fueled heavy-duty vehicles certified under the provisions of § 86.085–1 (b) may not average or trade credits with gasoline fueled heavy-duty Otto-cycle engines, but may average or trade credits with light-duty trucks.

(2) For diesel cycle heavy-duty engines:

(i) Each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading among all diesel-cycle engine families within the same primary service class is allowed.

(ii) Urban buses are treated as members of the primary intended service class where they otherwise would fall.

(e) *Averaging sets for particulate emission credits.* The averaging and trading of particulate emission credits will only be allowed between diesel cycle heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of particulate emission credits for diesel cycle heavy-duty engines are defined as follows:

(1) Engines intended for use in urban buses constitute a separate averaging set from all other heavy-duty engines. Averaging and trading between diesel cycle bus engine families is allowed.

(2) For heavy-duty engines, exclusive of urban bus engines, each of the three primary intended service classes for heavy-duty diesel cycle engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading between diesel-cycle engine families within the same primary service class is allowed.

(3) Otto cycle engines may not participate in particulate averaging, trading, or banking.

(f) Banking of NO_x and particulate emission credits:

(1) *Credit deposits.* (i) NO_x and particulate emission credits may be banked from engine families produced in any model year.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) After being generated, banked credits shall be available for use within three model years following the model year in which they were generated. Credits not used within the period specified above shall be forfeited.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and other restrictions described in paragraphs (d) and (e) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any

combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits can not be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for NO_x or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(g)(1) The following paragraphs assume NO_x and particulate nonconformance penalties (NCPs) will be available for the 1991 and later model year HDEs.

(2) Engine families using NO_x and/or particulate NCPs but not involved in averaging:

(i) May not generate either NO_x or particulate credits for banking and trading.

(ii) May not use either NO_x or particulate credits from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs and banking and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only while the other, whose FEL does not equal the standard, must use credits only.

(4) If a manufacturer has any engine family in a given averaging set which is using NO_x and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

(h) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(i) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the engine purchaser. Therefore, upon request by the Administrator, the engine manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

28. A new § 86.1104–90 is added to subpart L to read as follows:

§ 86.1104–90 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in any of the emissions averaging or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

29. A new § 86.1104–91 is added to subpart L to read as follows:

§ 86.1104–91 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in any of the emissions averaging, trading, or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

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July 26, 1990

Part III

Environmental Protection Agency

40 CFR Parts 350, 355, 370 and 372
Community Right-to-Know Reporting Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 350, 355, 370, and 372

[FRL-3716-5]

RIN 2050-AB88

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of title III of SARA. EPA previously established reporting thresholds for the first two years of reporting at 10,000 pounds for hazardous chemicals and at 500 pounds or the threshold planning quantity (TPQ), whichever is lower, for extremely hazardous substances (EHSs) (52 FR 38344; October 15, 1987). EPA also promulgated zero thresholds in that rulemaking to become effective in the third year of reporting, but stated in the preamble that it would conduct further studies of all reporting threshold alternatives and would propose final reporting thresholds before the beginning of the third year of reporting.

After completing its study of alternative thresholds, EPA published a Notice of Proposed Rulemaking (NPRM) proposing final reporting thresholds (54 FR 12992; March 29, 1989). Subsequently, because of the time required to address the comments received on the NPRM and to promulgate a final rule, EPA published an Interim Final Rule extending, for manufacturing facilities, the reporting thresholds established for the first two years of reporting under the October 15, 1987 rule (54 FR 41904; October 12, 1989). Also on October 12, 1989, EPA published a Supplemental Notice explaining its intention to establish uniform deadlines in the final rule on thresholds (54 FR 41907).

In today's final rule, EPA is promulgating final reporting thresholds under sections 311 and 312 at the current levels, 10,000 pounds for non-EHS hazardous chemicals that must be reported and 500 pounds or the TPQ, whichever is lower, for EHSs. In accordance with the October 12, 1989 Supplemental Notice, today's final rule also establishes uniform effective dates for all facilities subject to reporting requirements under sections 311 and 312. Thus, all facilities from all industry sectors will be subject to the final thresholds on the same dates.

Today, EPA is also finalizing several other provisions proposed in the March 29, 1989 NPRM, including the revision of the definition of the term "facility" to include subsurface operations, the treatment of mixtures in threshold calculations, and the implementation of all sections of title III by Indian Tribes on Indian lands (including section 313 of title III). EPA previously published a final rule correcting the discrepancy in the reportable quantities for hydrogen chloride and methacrylonitrile (54 FR 43164; October 20, 1989).

EFFECTIVE DATE: August 27, 1990.

ADDRESSES: Copies of materials relevant to this rulemaking are contained in the Superfund Docket—Docket Number 300RR-IF, room 2427, 401 M Street SW., Washington, DC 20460. The docket may be inspected by appointment between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Jones, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535-0202, or in the Washington, DC metro area and Alaska at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline.

I. Introduction

A. Statutory Authority

These regulations are issued under sections 302, 304, 311, 312, 313, and 328 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Statutory Background

1. SARA

SARA revises and extends the authorities established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Commonly known as "Superfund," CERCLA provides authority for Federal response action at certain sites where there is a release or a threat of release of a hazardous substance.

2. Title III of SARA

Title III of SARA establishes authorities for emergency planning and preparedness, emergency notification reporting, Community Right-to-Know reporting, and toxic chemical release reporting. Title III is intended to encourage and support State and local planning for emergencies caused by the release of hazardous chemicals and to provide citizens and governments with information concerning potential chemical hazards present in their communities. Title III is organized into three subtitles. Subtitle A establishes a framework for State and local emergency planning. Under section 301 of subtitle A, States have established State emergency response commissions (SERCs), which have, in turn, appointed local emergency planning committees (LEPCs). Section 302 requires EPA to designate Extremely Hazardous Substances (EHSs) and to establish threshold planning quantities (TPQs) for each EHS; at present, there are 360 designated EHSs listed at 40 CFR part 355. Every facility where an EHS is present at or above the TPQ is required to notify the SERC and to cooperate with the LEPC in the planning process specified under section 303 of title III of SARA.

Section 304 of title III requires the owners or operators of facilities to notify the local emergency coordinator(s) and State(s) likely to be affected as soon as the owner or operator has knowledge of a release of an EHS or a CERCLA hazardous substance affecting persons beyond the

facility boundaries, if the release equals or exceeds a reportable quantity (RQ) or one pound if an RQ has not been established by regulation.

Subtitle B of title III provides a mechanism for public awareness of hazardous chemicals present in the community. Sections 311 and 312 of title III are discussed in detail in the next section of the preamble. Section 313 requires facilities in SIC codes 20 through 39 (i.e., manufacturing facilities) to report total annual emissions of designated toxic chemicals that are manufactured, processed, or otherwise used at the facilities in quantities at or above certain thresholds. Subtitle C of title III contains general provisions concerning citizen suits and public availability of information.

C. Background of This Rulemaking

Section 311 of title III of SARA applies to the owner or operator of a facility where there are hazardous chemicals present for which the owner or operator must prepare or have available a Material Safety Data Sheet (MSDS) under Hazard Communication Standards (HCS) (29 CFR part 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have MSDSs, to the appropriate SERC, LEPC, and local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS, is one that poses either a physical or health hazard.[1] The tens of thousands of products covered by the HCS include petroleum products, explosives, and carcinogens.

The HCS regulations were restricted initially to facilities in Standard Industrial Classification (SIC) codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). A challenge to the revised standards by several industrial groups resulted in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA notified EPA that all provisions of the HCS were in effect for all segments of industry, including the construction industry, as of January 30, 1989 (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department of October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS, as specified in 40 CFR 370.20(b)). Facilities in the construction industry were required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS in a quantity at or above the reporting threshold, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or correct information within three months to the appropriate SERC, LEPC, and local fire department (40 CFR 370.21(c)).

Under section 312 of title III, owners or operators covered by section 311 of title III are required to submit additional information on the presence and location of hazardous chemicals at their facilities. Beginning March 1, 1991, under the uniform deadlines in today's rule, and annually thereafter, all facilities affected by the HCS that have hazardous chemicals at or above the reporting thresholds must submit a "Tier I" inventory form and may be required to submit a "Tier II" inventory form to SERCs, LEPCs, and fire departments.

Tier I forms require general information on the amount and location of hazardous chemicals by hazard category; Tier I forms must be submitted annually. Tier II forms require more detailed information on individual chemicals and must be submitted on request. Facilities may submit Tier II forms in lieu of Tier I forms.

Title III of SARA (section 311(b)) states that the EPA Administrator may establish reporting thresholds (i.e., quantities of hazardous chemicals) such that if the Hazardous chemical subject to the HCS is present at a facility in a quantity that is below the reporting threshold, the facility is not required to automatically report the presence of that chemical under the provisions of sections 311 and 312 of title III. On October 15, 1987, EPA promulgated regulations (52 FR 38334) establishing reporting thresholds under section 311(b) of title III for facilities subject to the OSHA HCS. The reporting threshold established for the first two years was 10,000 pounds, except for EHSs, which must be reported at the lower of 500 pounds or the TPQ. Access to information below these thresholds was preserved in that facilities must provide any such information when requested in accordance with 40 CFR 370.20(b)(3).

The October 15, 1987 rule also established a threshold of zero pounds for the third year of reporting; that is, no threshold as of the third year. For manufacturers, the third year begins on September 24, 1990; and for the construction industry, the third year begins on April 30, 1991.

EPA stated in the October 15, 1987 final rule that because of the substantial number and variety of comments received on the final threshold issue and uncertainty over the impact of the requirements on the recipients of the reports and ultimately on the effectiveness of the program, it would conduct further studies of alternative thresholds and propose final reporting thresholds before the beginning of the third year of reporting. On March 29, 1989 (54 FR 12992), EPA published an NPRM proposing final reporting thresholds based on analyses conducted since the promulgation of the October 15, 1987 final rule. In that NPRM, EPA proposed to maintain the current reporting thresholds (i.e., 10,000 pounds for non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs). Many commenters supported selection of the current thresholds, and some suggested alternative thresholds. Because it was not feasible to consider properly and respond thoroughly to all the comments, and to finalize and promulgate final reporting thresholds before the zero pound threshold for manufacturers automatically went into effect on October 17, 1989, and because EPA believed that it was not in the public interest to allow the zero threshold to go into effect for the short time required to promulgate final reporting thresholds that may differ from the zero threshold, EPA promulgated an Interim Final Rule extending the current thresholds under sections 311 and 312 for one additional year for manufacturing facilities (54 FR 41904; October 12, 1989). At the same time, EPA published a Supplemental Notice explaining its intention to establish uniform deadlines in the final rule on thresholds.

EPA received seventeen letters on the Supplemental Notice and the Interim Final Rule. All commenters supported the one-year extension of the current reporting thresholds, as well as the proposal to establish uniform effective dates for the final thresholds in today's rule. Accordingly, today's final rule on thresholds eliminates the different effective dates for various industry

[1] The procedures for determining whether a particular chemical is a hazardous chemical are set forth in 29 CFR 1910.1200 and appendices.

sectors and establishes uniform effective dates for all facilities subject to reporting requirements under sections 311 and 312. Under today's rule for all facilities subject to reporting under sections 311 and 312, including facilities in the construction industry and facilities newly subject to the reporting requirements, October 17, 1990 will be the effective date for final reporting thresholds for reports submitted under section 311; March 1, 1991 will be the effective date for final reporting thresholds for reports submitted annually under section 312.

Today, EPA is promulgating the final thresholds at the current levels; that is, beginning October 17, 1990, the reporting threshold is 10,000 pounds for non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs.

In the March 29, 1989 NPRM, EPA proposed a clarification to the reporting requirements for multi-establishment facilities. EPA has decided not to promulgate a final rule on this issue at this time.

EPA is also finalizing a number of other provisions proposed in the March 29, 1989 NPRM, including the revision of the definition of the term "facility" to include subsurface operations, the treatment of mixtures in threshold calculations for §§ 311 and 312, the implementation of title III by Indian Tribes on Indian lands, and several miscellaneous issues.

Finally, in the March 29, 1989 NPRM, EPA proposed to correct a discrepancy in the listing of RQs for two EHSs, hydrogen chloride and methacrylonitrile, between appendices A and B to 40 CFR part 355 (EHS list) and 40 CFR 302.4 (list of hazardous substances under CERCLA). On October 20, 1989 (54 FR 43164), EPA published the corrected RQs for hydrogen chloride at 5,000 pounds and for methacrylonitrile at 1,000 pounds, thereby resolving the discrepancy.

EPA received 167 comments letters addressing issues raised in the NPRM. The comments received, together with EPA's responses, are contained in the document, Responses to Comments Received on the Notice of Proposed Rulemaking under §§ 311 and 312 of title III of the Superfund Amendments and Reauthorization Act of 1986—March 29, 1989 (Comment Response Document), which is available in the docket supporting this rulemaking. In preparing today's rule, EPA considered all of the public comments submitted on the March 29, 1989 NPRM, with the exception of comments on the RQ discrepancy which were addressed in the October 20, 1989 final rule on that issue. Comments are addressed in sections II and III of this preamble. Section IV provides a summary of the analyses supporting today's rule.

D. Organization of the Final Rule

Today's final rule amends 40 CFR part 350.1 by adding definitions of "chief executive officer of the Tribe," "commission," "Indian country," "Indian Tribe," "local emergency planning committee," and "State," thereby codifying the definitions implementing EPA's designation of Indian Tribes as the implementing authorities for title III on Indian lands. Also, the definition of facility, including man-made or natural subsurface structures into which hazardous chemicals are purposefully placed or from which they are removed by human means such that the structures function as containment structures, is added to § 350.1. Similarly, § 355.20 is amended by adding the definitions necessary to authorize Indian Tribe implementation of reporting requirements. In addition, the definition of "commission" in § 355.20 is revised to add Indian tribal emergency response commissions and the definition of "facility" is revised to include man-made or natural subsurface structures.

In today's final rule, 40 CFR part 370 is also amended by adding the definitions pertaining to Indian tribal implementation and by revising the definitions of "facility," "commission," and "State." Section 370.20 is revised to incorporate the final thresholds for reporting under title III, sections 311 and 312. Section 370.28 is amended by revising paragraph (b)(1) and adding new paragraph (c) to clarify the requirement to aggregate EHSs in mixtures. The Tier I and Tier II reporting forms in § 370.40 have been modified in response to commenter's suggestions. The certification block on the Tier II form has also been changed to allow the owner or operator to place an original signature only on the first page of the submission.

In today's final rule, 40 CFR part 372 is amended by adding the definitions pertaining to Indian Tribes. These definitions have been added to § 372.3. In addition, § 372.30 has been revised to indicate that if a facility is located in Indian country, EPA Form R must be submitted to the office designated by the Chief Executive Officer of the Tribe.

Finally, the Burden Box has been eliminated from the Tier I and Tier II instructions because of the recent Supreme Court decision regarding the inapplicability of the Paperwork Reduction Act to regulations that require submission of health, safety, and other consumer information only to non-Federal (i.e., State and local) entities.

II. Final Reporting Thresholds

EPA considered six options in analyzing potential reporting thresholds for the March 29, 1989 NPRM. The options represented the full range of possible thresholds and were chosen because they allowed EPA to isolate the effects of varying threshold levels on each of three factors: (1) The number and types of chemicals that would be reported; (2) the number of facilities that would be required to report; and (3) the volume of chemicals that would be covered. Because different thresholds could be set for different classes of chemicals or even for individual chemicals, a large number of combinations of these factors are possible. For reasons of practicality, EPA analyzed six threshold options because they set bounds on the reasonable possibilities.

Option 1 would set a 50,000 pound reporting threshold for hazardous chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 2 would adopt the current reporting thresholds—10,000 pounds for hazardous chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 3 would set a 10,000 pound reporting threshold for hazardous chemicals, except for hazardous substances defined under section 101(14) of CERCLA and toxic chemicals designated under section 313 of title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 4 would set a 2,000 pound reporting threshold for hazardous chemicals, except for hazardous substances designated under section 101(14) of CERCLA and toxic chemicals designated under section 313 of title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 5 would set the reporting threshold at 500 pounds for all covered chemicals.

Option 6 would set the reporting threshold at zero pounds for all covered chemicals.

In the March 29, 1989 NPRM, EPA proposed Option 2, that is, to retain the reporting thresholds that have been applied in the first two reporting years (a 10,000 pound reporting threshold for most hazardous chemicals; the reporting threshold for EHSs at 500 pounds or the TPQ, whichever is lower). In today's

final rule, EPA is promulgating final reporting thresholds at these same levels proposed under Option 2.

EPA received 138 letters containing comments on the selection of final threshold levels, some agreeing with the proposed thresholds, others endorsing options for higher or lower thresholds, and others suggesting that lower thresholds be imposed after an interim period at the proposed levels. EPA believes the final reporting threshold of 10,000 pounds for non-EHS hazardous chemicals and 500 pounds, or the TPQ, whichever is lower, for EHSs is appropriate.

In establishing today's final reporting threshold, EPA attempted to strike the best balance between the amount of information generated for the public and the value of that information, and the cost to SERCs, LEPCs, and facilities of managing and providing the information. In estimating the current value of the information that would be provided below the current threshold of 10,000 pounds, EPA considered several factors: (1) The small number of requests from the public for information on hazardous chemicals present at facilities below the current threshold levels; (2) the limited current use of Tier I and Tier II information during emergencies and planning exercises; and (3) the fact that only twelve States have established thresholds below the 10,000 pound level for all covered hazardous chemicals.

EPA understands that the amount of resources devoted to data management and the ability of SERCs, LEPCs, and fire departments to manage information vary considerably across the nation. The data management survey conducted by EPA prior to the NPRM showed that in some States and communities, however, resources are extremely limited, and LEPCs are having difficulties managing the information currently being submitted. EPA believes it is important for these LEPCs in particular to focus on hazardous chemicals of known concern (i.e., those hazardous chemicals stored in large quantities and EHSs). The Regulatory Impact Analysis supporting the NPRM estimated there would be a four-fold increase in the number of hazardous chemicals that would be reported at 500 pounds compared to the 10,000 pound threshold (from 976 thousand to 4.3 million), and almost a two-fold increase (from 291,000 to 488,000) in the number of facilities required to report. Such a large increase in reports could divert limited resources and prevent proper evaluation and planning around facilities with the most hazardous situations.

It is not EPA's intent to restrict public access to important information. Any SERC or LEPC capable of managing the additional information that would be submitted at lower thresholds has the authority to request such information either on a facility-specific basis or may obtain such information across the board by establishing lower thresholds in its State or jurisdiction under State law. EPA's primary concern is with the ability of many SERCs and LEPCs to manage the additional information that would be submitted at lower thresholds. By maintaining the 10,000 pound threshold for hazardous chemicals other than EHSs, and maintaining the 500 pound or TPQ threshold, whichever is lower, for EHSs, EPA is ensuring that the LEPCs that have limited resources will focus those resources on the most hazardous situations. That is not to say that facilities that store hazardous chemicals in smaller quantities do not pose a hazard to the community. Rather, it acknowledges that with limited resources, priorities must be established to ensure the maximum level of protection of human health and welfare and the environment. The final thresholds, identical to those currently in effect, will not place any additional burden on SERCs and LEPCs and will allow them to improve quality control and use of the information in the preparation of emergency plans.

A number of commenters stated that the threshold for all hazardous chemicals should be 500 pounds because higher thresholds would exempt many facilities from reporting, depriving communities of valuable information. EPA believes that although EHSs warrant special attention and lower reporting thresholds, all hazardous chemicals do not present an equal risk. A lower threshold for EHSs, along with the 10,000 pound threshold for other hazardous chemicals, will provide SERCs and LEPCs with information on facilities that are likely to present the greatest hazard to the community. Today's thresholds do not deprive communities of valuable information; rather, they provide communities with the most valuable information. If a SERC or LEPC wants information not automatically submitted under today's final rule, a State or locality may establish lower reporting thresholds under State law.

Although some States currently require reporting at lower thresholds, most do not, and many do not devote sufficient resources to managing the information that would be generated by such a requirement. The reporting thresholds that EPA is promulgating in today's final rule will provide a ceiling threshold throughout the nation, without placing a burden on SERCs, LEPCs, and fire departments that are not yet prepared to deal with the large volume of additional information that would be submitted at lower thresholds. In addition, facilities are required to provide information on chemicals present in quantities below the reporting threshold if the SERC, LEPC, or fire department requests such information. This provision applies to all facilities, even those not subject to routine reporting under §§ 311 and 312. Thus, facilities that use significant amounts of hazardous chemicals will not be excluded from reporting if the State and local agencies have the resources to process additional information and want to receive the information.

The cost to SERCs and LEPCs and their ability to carry out requirements were carefully studied. EPA surveyed representatives from 12 SERCs, 32 LEPCs, and 15 fire departments thought to have implemented effective information management systems or procedures under §§ 311 and 312. The results of this survey are documented in "Information Management by State and Local Governments under §§ 311 and 312 of the Emergency Planning and Community Right-to-Know Act", December 1988. A copy of this document is in the docket supporting this rulemaking. Further, costs that would be incurred by SERCs, LEPCs, and fire departments under each threshold option were estimated in the "Regulatory Impact Analysis in Support of a Permanent Reporting Threshold under §§ 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986", also found in the rulemaking docket.

Option 5 (a 500-pound threshold applied to all hazardous chemicals), for example, would result in almost twice the annual costs to SERCs, LEPCs, and fire departments as compared to the costs imposed by the 10,000 pound threshold. Based on current levels of resources available to LEPCs for all their planning and community right-to-know activities, EPA concluded that for many LEPCs, such a low threshold would create a substantial burden, and would tie up many of the necessary resources used for gathering, evaluating, and utilizing information received under current reporting thresholds. Given these increases in the information management burden and in costs, EPA decided that a lower threshold was not feasible on a nationwide basis.

Some commenters suggested that EPA reconsider a threshold of 50,000 pounds because this threshold would represent a cost-effective storage quantity, and it is large quantity chemical storage that is

of most concern to emergency planners. EPA does not agree that 50,000 pounds is the quantity of hazardous chemicals of most concern to emergency planners. LEPCs, under title III, in fact, are focusing their planning efforts on EHSs and other hazardous chemicals stored in quantities ranging from one to 10,000 pounds. Several LEPCs are currently using the Tier II information in their planning process. Furthermore, facilities are familiar with the 10,000 pound threshold; only three of the 138 commenters on the threshold issue favored raising the threshold above current levels.

Several commenters stated that it is inappropriate to consider costs to industry in establishing threshold levels, and that EPA's primary concern should be maximizing the information available to State and local authorities. In support of their statement, these commenters cited a passage in the legislative history of §§ 311 and 312 in which Representative Edgar addressed the House floor. (Statement of Representative Robert Edgar, *Congressional record*, October 8, 1986.)

EPA does not agree that costs to industry cannot be considered as one factor in setting reporting thresholds. There is no evidence that Representative Edgar was speaking for the entire Congress. The remarks of a single representative in a House debate which is nowhere repeated or endorsed by other legislators in other floor debates or in the Conference Report cannot be interpreted to prevent EPA from considering the factor of costs in setting a final threshold. See, e.g. *Consumer Product Safety Commission* v. *GTE Sylvania Inc.*, 447 U.S. 102, 118–19 (1980); *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 311 (1979); In re *Kelly*, 841 F.2d 908, 912 n.3 (9th Cir. 1988). Neither the text of the statute nor the Conference Report preclude the Administrator from considering costs to industry in determining thresholds. Consideration of costs to facilities is relevant to Congress' goal of developing a manageable program for the collection and dissemination by localities of information on hazardous chemicals. The Conference Report specifically indicates that the two-tier reporting was adopted in section 312 "[t]o minimize the burden of this reporting." It would be inconsistent with the purpose of the two-tier reporting format for EPA to be prohibited from considering costs to industry in setting thresholds.

EPA does not believe that it placed an undue amount of emphasis on costs to industry or on cost effectiveness. EPA does believe that some consideration of costs to the SERCs, LEPCs, fire departments, and industry is important when evaluating the pros and cons of different final thresholds, because cost estimates give EPA some measurement of the impacts of the different thresholds upon government entities that must run a variety of public programs [2] and on facilities that face many requests for information and demands for environmental control.

Nonetheless, EPA agrees that the primary purpose of the reporting requirements under sections 311 and 312 is to provide information to the community. EPA's selection of the final reporting thresholds was not based primarily on cost considerations, but on the extent of which a more stringent standard could subvert the intent of sections 311 and 312 by overwhelming the capability of SERCs, LEPCs, and fire departments or manage and analyze submitted information. EPA believes that a manageable quantity of data that can be supplemented by requests for additional information and the imposition of lower State or local thresholds when appropriate, better serves the community's right-to-know.

Several commenters suggested that EPA use the proposed levels for an interim period and then impose a lower reporting threshold determined after further study. EPA considered establishing reporting thresholds in today's final rule for another interim period, similar to the approach taken in October 1987. EPA concluded, however, that it was best to minimize the uncertainty surrounding future reporting obligations. Uncertainty tends to encourage indecision and EPA is anxious for SERCs, LEPCs, and fire departments to have full information regarding the parameters of their data management obligations so that they may optimally plan for equipment purchases and labor needs. It is also important to minimize uncertainties for facilities so that they may develop optimal inventory tracking systems. To establish reporting thresholds under sections 311 and 312 for another interim period would not minimize uncertainty and, therefore, would slow compliance and data management decisions and investments.

An interim approach would only be useful if EPA were to again study the appropriate final threshold after that interim period. At the present time, EPA is not able to predict what the best threshold will be several years in the future. Although EPA recognizes that data management capabilities may improve over time as States and localities devote greater resources to this program and data management experience improves. EPA cannot predict that this will happen, nor what thresholds would be appropriate if it does happen. Thus, EPA believes it is in the public interest to choose a final threshold at this time, based upon all relevant information about the capabilities of SERCs and LEPCs to data and the usefulness of the information. EPA will continue to analyze data available from observations, reviews, reports, and comments received from SERCs, LEPcsd, fire departments, the community, and others responsible for carrying out portions of this program. As these data indicate that change is waranted, EPA will revise this rule including the threshold provision.

In the NPRM, EPA requested comment on whether the final threshold for EHSs should be 500 pounds or the TPQ, or simply the TPQ. EPA received comments supporting both options. In today's final rule, EPA is establishing the final reporting threshold for EHSs at 500 pounds or the TPQ, whichever is lower. That is, in today's final rule, EPA is maintaining the 500 pound cap as a reporting threshold for EHSs. Although EPA understands that there are some advantages to maintaining the TPQ as the sole reporting trigger for EHSs (i.e., consistency with the emergency planning provisions of title III), EPA believes that the different purposes of TPQs under sections 302 and 303 and reporting threshold under sections 311 and 312 support having different relevant quantities. Under sections 302 and 303, the presence at a facility of an EHS above its TPQ leads to certain required emergency planning steps for facilities and LEPCs. Thus, the TPQ is set at a level that is appropriate for mandatory emergency planning in all cases across the nation. On the other hand, the purpose of sections 311 and 312 is more directly related to community right-to-know. In establishing final reporting thresholds under sections 311 and 312, EPA endeavored to provide as much information as possible to the community without overwhelming the information management systems used by SERCs, LEPCs, and fire departments. Because EHSs generally represent

[2] A frequently repeated concern during the Congressional debate was the necessity to take account of the burden of a particular threshold upon State and local government so that useful and important information would not be "buried in an avalanche" of paperwork. See statements of Representatives Norman Lent (H9564), Gene Snyder (H9564), *Congressional Record*, October 8, 1986; see also statements of Representatives Al Swift (H9607), John Hammerschmidt (H9568), *Congressional Record*, October 8, 1986.

chemicals of highest concern to the community, EPA wanted to ensure that communities receive a substantial amount of information on EHSs, even when planning is not statutorily mandated. SERCs and LEPCs can use section 311 and 312 data to determine whether, due to site-specific factors, emergency planning under section 302(b)(2) would be appropriate. EPA believes it is most prudent to maintain the 500 pound cap on the reporting threshold for EHSs under sections 311 and 312, to ensure that information on these hazardous chemicals is readily available to communities and emergency planners.

EPA also considered establishing lower thresholds for hazardous chemicals on the title III section 313 list or on the CERCLA hazardous substances list. EPA decided not to impose these lower thresholds because the additional information that would be provided is generally available through other provisions of title III and, therefore, the additional burden that would be imposed on both industry and government was not warranted. For example, the section 311 and 312 reporting requirements focus upon the presence of hazardous chemicals at the facility, requiring the owner or operator to submit lists of chemicals or MSDSs and, on an annual basis, an inventory of those chemicals. Under section 313, title III already imposes inventory requirements upon owners and operators of facilities that manufacture, process, or use designated quantities of the toxic chemicals on the section 313 list.

Similarly, title III already has reporting requirements that directly employ the CERCLA hazardous substances list. Under section 304, facilities that release an RQ of any CERCLA hazardous substance or EHS must report the release to any SERC or LEPC affected by the release. Detailed follow-up reports must be submitted to the affected SERC(s) and LEPC(s) by any owner or operator required to report section 304. The nature of the information required in the initial and follow-up reports bears some similarity to the information required on an MSDS. For example, the report must include the chemical name or identity of any substance involved in a release, any known or anticipated acute or chronic health risks associated with the emergency, and where appropriate, advice regarding medical attention necessary for exposed individuals. Therefore, establishing lower thresholds for the section 313 chemicals or the list of CERCLA hazardous substances did not appear to provide communities with enough new, necessary, or useful information to justify the additional burden and the potential for confusion.

III. Analytical Approach

To determine the potential effects of the six options, EPA estimated the number of facilities in the U.S. that would be affected by each threshold, the average number of chemicals that would be reported per facility, the total number of reports that would be filed, the average pounds of chemicals reported per facility, and the total pounds of chemicals that would be reported in the U.S. The national estimates were developed by extrapolating from data on the amounts of hazardous chemicals that are present in specific localities. A Los Angeles, California database and the data from reports filed under the State and Federal Right-to-Know programs in New Jersey best satisified the criteria EPA identified for the study. The Los Angeles and New Jersey databases were well-suited to the threshold analysis because they include information submitted by both manufacturing and non-manufacturing facilities, represent all sizes of facilities, and contain information on the quantity of hazardous chemicals at facilities covered by the HCS regulations. (For a full discussion of the selection of databases, see chapter 2 of the Regulatory Impact Analysis in Support of a Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (RIA) in the docket supporting this rulemaking).

Some commenters stated that the selected databases do not represent the national and do not accurately capture all necessary information. EPA acknowledges that the data from several States cannot capture all relevant national information. Nonetheless, EPA believes that the New Jersey and Los Angeles databases are the best readily available information, and that the methodology used in the analysis adequately adjusts the data for the national population. EPA extrapolated from the selected databases to the U.S. population on the basis of SIC codes. Also, EPA assessed the effects of the selection of the New Jersey and Los Angeles databases by comparing the extrapolated results with national statistics on chemical and petroleum production and use. Estimates of the number of pounds that would be reported as extrapolated from the two databases are reasonably close to national statistics. Moreover, the estimated number of affected facilities and estimated costs of the rule generated through independent analyses of the two databases are similar, notwithstanding the differences in the industrial facilities represented and in the area covered (a State versus a metropolitan area) by each database. EPA believes, therefore, that the two databases used to estimate the potential effects of different threshold options provided adequate information and generated accurate results.

Several commenters stated that EPA should establish different threshold levels for different hazard categories. EPA considered establishing risk-based reporting thresholds for all the hazardous chemicals subject to sections 311 and 312, taking into consideration the hazards posed by each chemical or group of chemicals, the potential for a significant release, and the potential exposure of surrounding populations. As EPA stated in its October 15, 1987 final rule and again in the March 29, 1989 proposed rule, such as hazard-based approach was not feasible, given the tens of thousands of hazardous chemicals covered under sections 311 and 312 and the variety of locations and situations in which hazardous chemicals may be stored. Existing methodologies that can be used to evaluate risk associated with specific hazards are not appropriate approaches for this rulemaking because they are site or chemical specific. For example, use of the CERCLA Hazard Ranking System (HRS) was recommended by one commenter. The HRS is innappropriate for determining reporting threshold levels under sections 311 and 312 because it is site-specific, and site-specific exposure pathways must be known to estimate risk levels. Although chemical-specific or site-specific information cannot be considered across all the chemicals covered under sections 311 and 312, it can be considered by local authorities on a site-specific basis. EPA believes, therefore, that exposure potential and site characteristics are more appropriately considered by LEPCs in their planning processes than by EPA in establishing reporting thresholds.

One commenter suggested that the analytical approach should consider the synergistic and cumulative effects of hazardous chemicals. EPA agrees that ideally such effects, as well as chemical-specific hazards, should be considered in establishing reporting thresholds. There is, however, no existing analytical model that can be used to evaluate these effects over the number of hazardous chemicals for which MSDSs must be prepared. EPA believes that the analytical approach used to evaluate the reporting threshold options in today's

final rule resulted in final reporting thresholds that will provide information to local communities about hazardous chemicals most likely to pose the greatest hazard, without overwhelming their ability to manage and use the information.

One commenter questioned EPA's use of the Acute Hazardous Events (AHE) database because it does not include incidents that result in chronic effects or environmental damage. EPA would like to clarify that the AHE data were used primarily to estimate how data that would be received at alternative threshold levels relate to facilities involved in accidental releases that led to serious acute effects. The data show that most events sufficiently severe to cause human casualties would be at sites subject to reporting under the threshold levels being promulgated today. The accident data in the AHE database provide information primarily on acute effects, but relatively little information on chronic effects or environmental damage associated with the different reporting thresholds. EPA, however, recognizes the importance of chronic effects and environmental damage and, therefore, requires notification of a release of a hazardous substance or EHS that equals or exceeds an RQ. When the National Response Center, SERC, and LEPC are notified of a hazardous substance release, the responsible government authority evaluates the risks associated with the release, considering acute as well as chronic and environmental effects.

A number of commenters challenged EPA's comparison of the costs and benefits of the alternative reporting thresholds. Because EPA could not quantify the benefits attributable to each threshold option, the commenters claimed that EPA's conclusions were unsupported. EPA does not agree. Based on its survey of SERCs, LEPCs, and fire departments with relatively advanced data management systems, EPA believes that many of these State and local authorities do not have the present capability to use the additional information that would be generated at thresholds lower than those established by today's final rule. For each given community, however, the cost benefit comparison will vary. EPA believes it is most prudent, therefore, to establish Federal thresholds at a level that will maximize the net benefits for most communities, while preserving the rights of States and local governments to develop more stringent reporting requirements if they believe that the benefits of receiving more information than that submitted under the thresholds in today's rule are greater than the incremental costs.

Several commenters stated that EPA did not consider or properly value certain benefits, such as accident prevention. EPA is aware that accident prevention can be a direct outgrowth of reporting, due to a consequent increased awareness on the part of industry and the local community of the presence of reported hazardous chemicals. Such benefits, however, are difficult to quantify and could be considered only in a qualitative sense.

Two commenters stated that costs were not accurately considered because the projections of the number of affected non-manufacturers are underestimated. Although the number of affected facilities and chemical reports in specific industry categories or sectors (such as non-manufacturing) may be under or overstated in the Regulatory Impact Analysis, the sensitivity analysis supporting today's rulemaking indicates that the aggregate quantity of chemicals covered under the zero threshold, including petroleum, is reasonably close to national projections of chemical and petroleum use derived from Census data. In addition, the Los Angeles and New Jersey databases yield comparable total cost estimates despite significant differences in the underlying numbers of manufacturing and non-manufacturing facilities. Consequently, EPA believes that the potential inaccuracies in the analysis caused by extrapolation are not significant enough to affect the decision to select today's final reporting thresholds.

IV. Other Issues

A. Multi-establishment Facility Reporting

In the March 29, 1989 NPRM, EPA proposed a clarification to the reporting requirements for multi-establishment facilities. In particular, in response to a concern that owners of certain multi-establishment facilities, such as industrial parks, do not have sufficient knowledge about specific hazardous chemicals located at their facility to comply with the title III reporting requirements, EPA proposed a regulatory provision that would have clarified how establishments at such facilities may report as facilities. The Agency has decided not to promulgate a final rule on multi-establishment reporting at this time. After receiving substantial public comment on this provision, EPA needs additional time to consider and develop the appropriate regulatory approach to various issues connected with multi-establishment reporting. EPA does not, however, believe it is appropriate to delay the promulgation of final thresholds while the Agency considers multi-establishment issues. For this reason, today's final rule does not include a provision addressing multi-establishment facilities.

B. Tier I and Tier II Forms

EPA has made several small modifications to the Tier I and Tier II forms and instructions in response to commenters' suggestions and concerns. Some suggestions were not accepted for reasons stated in the Response to Comments Document. The modifications in today's final rule include adding check boxes to indicate that the information is identical to that submitted in the previous year; lines on the Tier II form for listing the EHS chemical name(s) present in a mixture; optional check boxes for each hazardous chemical reported to facilitate data management at the State and local level; and several other small changes.

Another change made in today's final rule involves the certification statements on the Tier I and Tier II forms. EPA has received several requests that the Tier II form be modified to allow owners and operators of facilities to place an original signature only on the first page of a multi-page submission. EPA agrees that an original signature need not be placed on every page of the Tier II submission so long as the owner or operator certifies that he or she has reviewed every page of the submission. Therefore, the instructions for the certification on the Tier II form have been modified to allow the owner or operator to place an original signature only on the first page of the submission, provided that (1) submissions to the SERC, LEPC, and fire department each contain an original signature on at least the first page, (2) the total number of pages in the submission is inserted in the space provided in the certification statement, including all confidential and non-confidential sheets and all attachments, and (3) subsequent pages in the submission contain a photocopy of the original signature or a signature stamp, as well as the date that the original signature was affixed to the first page and the total number of pages in the submission. Similarly, the Tier I certification instructions have been modified to state that the owner or operator certifies that all information in the submission, including all attachments, is true, accurate, and complete; the total number of pages in the submission must be indicated in the

space provided in the certification statement.

Three commenters stated the EPA should retain OSHA's Hazard Communication Standard (HCS) list of exemptions from coverage in the instructions, along with the comparison of EPA's hazard categories with OSHA's HCS hazard categories to reduce the time necessary to comply with sections 311 and 312. EPA does not agree that including the list of OSHA's HCS exemptions shortens the time required for compliance. By including HCS exemptions on previous Tier I and Tier II forms, EPA believes that it might have appeared to the regulated community that EPA, SERCs, and LEPCs were the appropriate authority for interpreting the scope of the HCS. The most appropriate authority for interpreting the HCS is OSHA. Reporting time for both title III and the HCS can best be shortened by the method set forth in the instructions to the title III reporting forms, which refers parties to the OSHA HCS. EPA, however, does agree that it is necessary to retain the OSHA—EPA hazard category comparison because MSDSs are prepared based on OSHA's HCS hazard categories.

Two commenters suggested that EPA reconsider the use of the Tier I forms because they are too general an they place an undue burden on industry and local government authorities. Although EPA agrees that the information submitted on the Tier II form is more useful, the statute allows owners and operators of facilities the option of submitting Tier I or Tier II forms, unless the Tier II form is specifically requested by a SERC or LEPC. See section 312(e)(1) of title III; H.R. Conf. Rep. No. 962, 99th Congress, 2d Sess., 290 ("Conference Report"). States, however, may develop legislation requiring submission of Tier II forms, and some have already done so. Also, EPA continues to encourage submissions of Tier II forms unless SERCs, LEPCs, or fire departments have indicated a preference for Tier I forms.

Another commenter stated that EPA should discourage States from creating their own special report forms which add to the costs of industry compliance, especially if changes to the form make the computer software used to prepare the form obsolete. EPA does not agree that it should discourage States from developing their own forms or tailoring Tier I and/or Tier II to meet particular needs or to avoid overlapping Federal requirements. EPA, however, does encourage States to consider industry concerns in modifying the inventory forms. When EPA makes format changes, it generally considers the burdens such revisions impose. The changes made to the Tier I and Tier II forms in today's final rule have been determined to be necessary, notwithstanding potential costs to industry.

C. Subsurface Operations

In response to many questions about the applicability of title III regulations to subsurface operations, EPA proposed in the March 29, 1989 NPRM to revise the regulatory definition of facility to clarify that subsurface structures that are part of man-made operations, including open surface mines, are included within the statutory definition of facility and, therefore, are subject to title III reporting requirements.

Twenty commenters opposed and three commenters supported the proposed revision to the definition of facility to include subsurface structures. A number of the commenters stated that the revision would improperly expand the definition to include facilities and substances exempt from the requirements of some sections of title III. EPA does not agree that the revised regulatory definition of "facility" changes reporting requirements or negates exemptions contained in title III statutory provisions. The regulatory definition is revised today to include only those subsurface structures that are man-made or natural structures into which hazardous chemicals are purposefully placed or removed through human means such that the structures function as a containment structure. If an activity or facility is exempt from certain title III requirements, today's regulatory definition does not alter that exemption. For example, the revised regulatory definition of "facility" does not alter the applicability of the transportation exemption. If natural gas is stored at a production facility, the product is subject to title III requirements; if natural gas is being stored incident to transportation, then it comes within the title III exemption and is not subject to title III reporting requirements.

As a second example, one commenter noted that because subsurface mining operations are not subject to OSHA's HCS, they are also not subject to sections 311 and 312 of title III. EPA agrees that, although a mining operation may come within the definition of the term "facility," it is not necessarily within the scope of the OSHA HCS. If the operation is not subject to the OSHA HCS, it is not subject to the requirements of sections 311 and 312. The fact that a facility does not come within the scope of the OSHA HCS is not relevant, however, to the emergency planning and release notification requirements of sections 302, 303, and 304. Thus, if there are EHSs at a mining facility in underground containment structures in quantities equal to or exceeding TPQs, the owner or operator is required to report them under section 302 and to participate in the community planning process as required under section 303. Also, if the facility produces, uses, or stores a CERCLA hazardous substance or an EHS, and releases the hazardous substance or EHS in a quantity that equals or exceeds the applicable RQ, the release must be reported to the SERC(s) and LEPC(s) likely to be affected by the release, and to the National Response Center in the case of a CERCLA hazardous substance. One commenter stated that the revised definition could result in daily reporting of releases from mining operations. If releases of hazardous substances or EHSs from mining operations at or above reporting levels occur daily, they must be reported daily. The commenter should note, however, that recurring releases may qualify for reduced reporting under CERCLA section 103(f)(2) if they are "continuous" and "stable in quantity and rate," or they may be exempt from reporting requirements if they are federally permitted under CERCLA section 101(10). (See the NPRM on reporting of continuous releases (53 FR 12868; April 19, 1988) and the NPRM on federally permitted releases (53 FR 27268; July 19, 1988)).

Three commenters opposed including naturally occurring materials such as natural gas in the calculation of a facility's inventory for comparison with the TPQ under section 302 because natural gas production is already governed by regulations under other authorities, storage and withdrawal operations do not impose a hazard to nearby populations, and it would be difficult to estimate quantities of natural gas "present" at a facility. EPA does not agree. Any substance placed in, or being removed from, a subsurface location by human intervention, such as mining, is subject to title III requirements and, therefore, must be included in a facility's inventory. EPA understands that many industries must comply with regulations and safety standards under other authorities. Nevertheless, compliance with such requirements does not fulfill the purpose of title III which is to provide the public with information on the chemicals present at facilities in order to prepare the community to respond when hazards are not controlled. Compliance with other

regulations, therefore, does not relieve the regulated community from the responsibility to comply with the requirements of title III. Further, each owner or operator must use the best information available, knowledge of the operating processes of the facility, and engineering judgment to estimate the quantities of hazardous chemicals present in subsurface containment structures. Reporting facilities should be aware that estimates need not be exact; facilities are only required to estimate which among many broad ranges indicated on the Tier I and Tier II forms match their inventories.

D. Treatment of EHS Mixtures in Reporting Threshold Calculations

In the March 29, 1989 NPRM, EPA proposed new regulatory language addressing when and how facilities must report EHSs that exceed their applicable reporting threshold under sections 311 and 312 when the EHSs are present in different mixtures.

Section 311(a)(3) of title III provides facilities with the option of reporting on a mixture as a whole or reporting on each hazardous component of the mixture. In some instances, reporting by component could result in the filing of fewer reports. Where components of a mixture are not present at a facility in threshold quantities, a facility would not be required to submit a report under sections 311 or 312 even though the quantity of the mixture itself is present in a threshold amount. Similarly, reporting by mixture could occasionally result in fewer reports when the mixtures are below threshold quantities. In the March 29, 1989 NPRM, EPA proposed a new provision, § 370.28(b)(3), related to reporting of EHSs in mixtures. This provision was designed to ensure that EHSs would be reported regardless of the option of reporting by mixture or by component. EPA believed that the importance of EHSs to emergency planning and community right-to-know warranted a requirement that these chemicals be reported, in some fashion, whenever they are present at facilities in above-threshold quantities. (See 54 FR 12999).

In proposing regulatory language to address the special question of reporting EHSs even when EHSs are present in mixtures, the Agency did not take away or in any way alter the option provided in the statute of reporting on mixtures as a whole or by hazardous component. Proposed § 370.28(b) required facilities to report the presence of EHSs at their facility if they were present in above-threshold quantities, but provided facilities with the option of reporting those EHSs either as components of mixtures or reporting the mixture as a whole. Proposed § 370.28(b) stated:

> (3) If extremely hazardous substances are hazardous components of a mixture, the quantity of the extremely hazardous substance in each mixture shall be aggregated to determine if the threshold value has been reached for the facility. Reporting may be accomplished by reporting on the component or the mixture even if the amount of the mixture(s) is below the reporting threshold.

To supplement this regulatory language, EPA proposed the addition of a box on the Tier II form whereby facilities that chose to report a mixture as a mixture (rather than by component) would be required to check whether the mixture contained an EHS.

Some commenters did not understand EPA's intent in proposing these amendments, others stated that the proposed regulatory language was confusing, and others questioned the utility of the information received. As a consequence, EPA is promulgating language in § 370.28(c) to clarify the reporting requirements in § 370.28. None of the comments received led the Agency to change the reporting requirements as proposed.

Stated as simply as possible, § 370.28 requires facilities to aggregate each EHS, whether it is present as a mixture component or in its pure form. Aggregation of non-EHS hazardous chemicals present in mixtures and in their pure form is not required, but may be done if a facility is reporting all hazardous chemicals in mixtures by component. If a facility has an EHS, and its quantities within mixtures and in its pure form equal or exceed its applicable threshold, the facility must report that EHS. Once the necessity of reporting that EHS is established, the facility has two primary choices in the manner in which it reports this EHS. The facility may either report the EHS separately as a component of one or several different mixtures, or may report the EHS by reporting the mixture of which the EHS is a part. For example, if five mixtures each contained 100 pounds of methyl mercaptan (an EHS), reporting could be accomplished by reporting 500 pounds of methyl mercaptan (reporting by component) or by reporting the five mixtures separately.

EPA is requiring that only EHSs be aggregated; aggregation of non-EHS hazardous chemicals in different mixtures at a facility is not required. Congress' intent that aggregation be permitted in setting thresholds is clear from the Conference Report. The requirement to aggregate EHSs under section 311 is consistent with the requirements under section 302 of title III. EPA views EHSs to be a special class of hazardous chemicals. EPA anticipates that LEPCs will request information on EHSs present at a facility, and routine reporting of that information under sections 311 and 312 should facilitate the planning process. EPA is not requiring the aggregation of non-EHS hazardous chemicals at facilities because of the potential burden that would impose on facilities, because EPA has determined that data on EHSs generally have greater emergency planning and right-to-know value to communities than do data on other chemicals, and because information on those hazardous chemicals is not required under section 302 of title III. The aggregation requirement of this rule maintains the option granted in the title III statute that owners or operators of facilities be able to report either by component or by mixture. The requirement that only EHSs be aggregated across mixtures in order to determine whether a threshold is met maximizes the information about one group of hazardous chemicals (i.e., EHSs), while maintaining a manageable program.

The following describes how to report above-threshold EHSs on a Tier II form where the facility is reporting some mixtures as a mixture and some mixtures by component. When filling out a Tier II form and reporting some mixtures as mixtures and some by component, the facility must do two things. First, for any mixture containing the above-threshold EHS that the facility is reporting by component, the facility must report the above-threshold EHS separately by chemical description, physical and health hazard, inventory and storage code and location. When reporting inventory information (maximum and average daily amount and number of days on-site), the facility should calculate or refer to those quantities of the EHS that are present only in the mixtures that the facility is reporting by component; the facility need not include within these calculations the amounts of the above-threshold EHS that are contained within mixtures that the facility is reporting as a mixture. Similarly, when reporting the storage code and location for the above-threshold EHS, the facility should list all storage codes and locations of any mixture containing the above-threshold EHS that the facility is reporting by component; the facility need not refer to the location or storage code of any mixture containing the EHS that the facility is reporting as a mixture.

Second, for any mixture containing an EHS that the facility is reporting as a

mixture, the facility must check the box labelled "EHS" to indicate that the mixture contains an above-threshold EHS, and must also write the name of the above-threshold EHS(s) contained within the mixture on the line provided. When filling out the inventory information, the facility should include in the calculation only those quantities of the same mixture and should follow a similar procedure when filling out the storage code and location information.

One commenter stated that EPA should establish a minimum percentage of a mixture below which EHS components would not have to be aggregated for reporting. EPA agrees and directs the commenter to the section on "calculation of quantity" at 40 CFR part 370.28, which states that only components greater than 1 percent, or 0.1 percent for carcinogenic components, are reportable. Nevertheless, if the owner or operator of a facility suspects that an EHS is present in a mixture, the entire mixture should be reported because the identity and quantity of the EHS is unknown and, therefore, cannot be aggregated with any accuracy with other quantities of EHSs present at the facility.

One commenter stated that the requirement to aggregate EHSs in mixtures should only be applied when the EHS retains some of its characteristics in the mixture. EPA does not agree with this comment because determining whether an EHS retains its characteristics in a mixture cannot be easily done. Also, EPA believes that only rarely would an EHS be a component of a mixture in a concentration greater than 1 percent or 0.1 percent if carcinogenic and not retain its characteristics. Thus, if a mixture requires an MSDS, the owner or operator should consider the component EHSs in making threshold calculations.

One commenter suggested that section 370.28 be redrafted to provide that only those hazardous chemicals or "extra-hazardous" substances in the same kind of mixture be aggregated to determine whether the reporting threshold is exceeded. EPA disagrees. The aggregation requirement applies to emergency planning notification under section 302 as well as to the inventory reporting requirements of sections 311 and 312. EPA does not believe that modifying the aggregation requirement as the commenter suggests would adequately support planning for emergencies involving EHSs. Also, hazardous chemicals found in different mixtures can have synergistic reactions. EPA believes that it is especially important, therefore, that EHSs present at a facility be aggregated across all mixtures.

Another commenter urged that, for purposes of determining reporting thresholds, the hazardous components of crude oil be excluded. EPA sees no reason to exclude components of crude oil from the requirement to aggregate EHSs for purposes of determining whether reporting thresholds have been reached. Any EHS component of crude oil must be aggregated unless the crude oil is reported as a mixture. Non-EHS components of a mixture, including crude oil, need not be aggregated.

E. Implementation of Title III by Indian Tribes on Indian Lands

In today's rule EPA is promulgating its proposal in the March 29, 1989 NPRM, to designate Indian Tribes as the implementing authority for title III on all lands within "Indian Country." Accordingly, the chief executive officer of the Tribe is responsible for the functions of the State governor under SARA section 301, including the appointment of an emergency response commission for the Tribe. This tribal commission would then be responsible for carrying out the duties of the SERC, including the designation of local emergency planning districts and the appointment of an emergency planning committee for each district. The district emergency planning committee will carry out the same functions as a LEPC in the local emergency planning districts designated by a SERC. Also, for facilities located within Indian country, the fire department run by the Tribe will be the fire department designated to receive section 311 and 312 reports. Finally, section 313 of title III requires that the State governor designate an entity to be responsible for managing toxic release inventory data. In Indian country, this entity would be designated by the chief executive officer of the Indian Tribe.

Several commenters endorsed EPA's proposal to recognize tribal sovereignty over environmental protection on Indian lands and to provide for tribal implementation of title III in a manner equivalent to implementation by State and local governments within their respective jurisdictions.

One commenter stated that Congress did not intend title III to be implemented separately on Indian lands by Indian Tribes because title III lacks any reference to Indian Tribes or lands and the title III definition of the term "State" does not include Indian Tribes. Two commenters asserted that the Indian Tribes activities in implementing title III should be similar to the activities of the LEPCs and come under the authority of a SERC.

EPA does not agree that implementation of title III on Indian lands should be under the authority of a State or SERC. Although title III lacks an explicit reference to Indian Tribes or to the implementation of the Act on Indian lands, EPA believes, based on the legislative history of SARA, that Congress clearly intended that the protection of title III apply to all persons inhabiting Indian lands. Title III emphasizes emergency response planning and chemical awareness at the local level. When applied to Indian lands, this supports implementation of the Act by tribal authorities. EPA believes that in the absence of clear legislative intent on who should implement the statute on Indian lands, EPA has the discretion to designate the Indian Tribes as the implementing authority. Also, under applicable law on Indian jurisdiction, States are generally precluded from exercising jurisdiction over Indians in Indian country absent a clear expression of congressional intent to the contrary. Nothing in the language or legislative history of title III suggests that Congress intended to subject Indian Tribes to State regulation on Indian lands, especially in an area of such importance to the health, safety, and welfare of the Indian community as chemical emergency response planning.

One commenter stated that owners or operators of facilities on Indian lands should report to State and local officials to avoid hindering effective emergency planning and response. EPA does not believe that Indian tribal jurisdiction over Indian lands will hinder effective implementation of title III. Effective emergency response planning requires that no more than one entity be responsible for implementing the program in a given area. While States may be unable to exercise jurisdiction over Indian-owned facilities in Indian country, Indian Tribes generally can exercise civil regulatory authority over Indians and non-Indians on Indian lands with regard to matters affecting the health and welfare of the Tribe. (See *Montana* v. *United States*, 450 U.S. 544, 566 (1981).) This authority is sufficient to fully implement the requirements of title III.

One commenter expressed concern that releases from facilities located on Indian lands may affect areas outside Indian jurisdiction, thereby requiring a State or local response. EPA believes this problem is endemic to any emergency response scheme that relies on reporting to local officials. By definition, any release has the potential

to affect areas outside the boundaries of the local jurisdiction and, therefore, to affect more than one local jurisdiction or more than one State. This concern was recognized in the legislation under section 304(b)(1) which requires that notice be provided to all SERC(s) and LEPC(s) likely to be affected by the release. Response to such releases can be handled in the same way that cross-jurisdictional releases from facilities outside Indian lands are handled, by cooperation between the authorities of the affected jurisdictions. EPA encourages Indian Tribes, SERCs, and LEPCs to participate in joint planning and cooperative efforts to prepare for such potential emergencies.

Four commenters urged EPA to promulgate regulations to protect Indian Tribes that choose not to develop title III program capabilities and to ensure that there are no gaps in the health and environmental protection program established by title III. Under title III, the Federal government is not responsible for implementation prior to delegating responsibility to respective State, local, or Tribal authorities. The statute requires State and local authorities to carry out the recordkeeping and emergency planning functions of title III. EPA's responsibility is to establish the program by promulgating necessary regulations, and by providing guidance, training, and technical assistance. EPA believes that Indian Tribes are the appropriate government authority for implementing title III in Indian country and, therefore, Tribes have the same obligations as States and local authorities under the law. EPA, however, does recognize its obligation, consistent with EPA policy, to help Tribes carry out their responsibilities, and intends to provide guidance, training, and technical assistance tailored to the needs and capabilities of Indian Tribes.

Although endorsing EPA's approach, several commenters questioned whether Tribes have sufficient resources to carry out the implementation of title III. EPA recognizes that resources are limited on Indian lands, but believes that basic emergency planning can be accomplished with minimal resources. To satisfy basic requirements, tribal authorities must develop emergency plans and establish a mechanism to disseminate to the public information submitted by facilities under the reporting requirements of the plan. The Tribe is not required to develop the capability to respond to all releases of hazardous material. In many cases, Tribes, like rural or small communities, will not be able to equip, train, and maintain a hazardous material response capability for significant releases. Nonetheless, Tribes can determine how they will deal with releases until assistance can be obtained.

One commenter asked whether EPA would phase in title III implementation on Indian lands and establish new deadlines for submitting MSDSs and emergency inventory forms and for preparing emergency plans. EPA is not establishing new regulatory deadlines in today's final rule. EPA does not believe that there is an apparent programmatic benefit to establishing new deadlines. It is imperative that facilities on Indian lands that have not complied with reporting provisions begin as soon as possible so that Tribes can assess their readiness to respond to chemical mishaps and to work with owners and operators of facilities to reduce the potential of their occurrence. Communities, including Indian Tribes, therefore, should not delay in identifying and addressing these risks.

In the March 29, 1989 NPRM, EPA noted that any Tribe may enter into a cooperative agreement with another Tribe, or with the State(s) within which its lands are located to achieve a workable title III program. EPA also solicited comment on whether it should institute a formal procedural mechanism for such cooperative agreements. Nine commenters supported instituting a mechanism for cooperative agreements and recommended that public notice of such agreements be published. EPA agrees that a formal procedural mechanism for cooperative agreements would be useful to facilitate the exchange of information. The final rule, therefore, requires any Tribe that has entered into a cooperative agreement with a State, to submit a copy of the signed agreement to the EPA Regional office in the EPA Region where the Tribe and State are located, within 60 days of signing the agreement. EPA will annually publish a list of any new agreements and copies of the agreements will be available from EPA Regional offices.

Another commenter requested that EPA define "cooperative agreement" and provide specific guidance for the development of such agreements. For purposes of title III, cooperative agreement is any formal arrangement reached by States and Tribes that meets the needs of the parties to the agreement and is entered into with full knowledge and consent. Each agreement is expected to be unique and to address the specific needs of the parties. Tribes may tailor cooperative agreements to authorize a State to implement provisions of the title III program that the Tribe is not prepared to undertake. EPA will endeavor to provide technical assistance on developing cooperative agreements to Tribes and States, but neither this assistance nor the publication of lists of parties to cooperative agreements should be considered an approval process. Tribes, like States, may enter into cooperative agreements without Federal oversight.

F. Miscellaneous Issues

Two commenters urged EPA to evaluate ways to minimize the paperwork burden. One commenter suggested that the timeframe for reporting status changes at facilities be changed from 90 to 180 days. Another commenter suggested that the option under section 311 to submit MSDSs instead of a list of chemicals should be eliminated. Section 311(d)(2) of SARA title III specifies the timeframe for reporting updates under section 311. The option to submit MSDSs or chemical lists is also specified in the statute. States and localities, however, are not prohibited from acting under authority of local law and developing requirements stipulating the submission of lists.

Several commenters requested exemptions from reporting requirements. One commenter requested an exemption from a hazardous chemical that remains on-site less than 90 days. Another commenter stated that a remote facility served solely by a volunteer fire department should be exempt from reporting requirements. EPA is not granting any additional reporting exemptions in today's final rule. EPA does not agree that a hazardous chemical on site for less than 90 days should be exempt from section 311 and 312 reporting requirements. It was the intent of Congress to provide the public with access to information on all hazardous chemicals present at facilities, without regard to the length of time they are on site. Similarly, EPA believes that facilities should be subject to reporting requirements regardless of location. Information about such facilities could be very useful in emergency response situations.

One commenter stated that the exemption from reporting for "articles" in sections 311 and 312 should also apply to section 302 reporting. EPA does not believe that Congress intended that there be such an exemption from the planning notification requirements under section 302.

Another commenter stated that small laboratories used for process analysis should be exempt from the reporting

requirements under sections 311 and 312. EPA agrees that such laboratories are exempt from section 311 and 312 reporting so long as they are exempt from the OSHA Hazard Communication Standards (see 52 FR 38347; October 15, 1987).

One commenter asserted that the rule should state that transporters should report releases to the National Response Center (NRC), which would notify the appropriate SERC, which would, in turn, notify the appropriate LEPC. Thus, transporters would not be required to notify SERCs and LEPCs directly. EPA does not agree that the NRC should make such notifications for transporters. The statute requires transporters to notify SERCs and LEPCs directly. The NRC is developing a computer link, however, that would facilitate direct notification of SERCs as well as EPA Regional offices of a release notification. When a link is fully operational, EPA will consider modifying today's regulation to allow the NRC's notification of the SERC to partially satisfy the reporting requirements under title III, section 304. Until such time, however, facilities and transporters must notify SERCs and LEPCs directly of a reportable release.

Several commenters requested that EPA consider using the metric designations required in the Omnibus Trade Act of 1988 because all government agencies will be required to use the metric system in 1992. EPA agrees with the commenters that metric designations are important and has included metric units in today's final rule.

Five commenters asked EPA to require that States adopt uniform reporting thresholds. EPA cannot require States to adopt uniform reporting thresholds because title III does not preempt State and local laws. EPA considered State laws in making its decision on final thresholds and encourages States to consider the burden imposed on industry when developing their laws. Nonetheless, States are free to tailor their reporting requirements to their unique concerns.

One commenter requested that, for purposes of section 304 reporting, the term facility should include vessels. EPA cannot agree because to the extent that vessels are not "stationary items" or "motor vehicles, rolling stock [or] aircraft," vessels are outside the statutory scope of the title III definition of facility. Releases of hazardous substances from vessels, however, may require notification under CERCLA section 103 and/or the Clean Water Act.

V. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Under E.O. 12291, a "major" rule is one that is likely to result in (1) an annual cost to the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprise to compete in domestic or export markets.

The RIA in support of this rulemaking shows that today's regulation is non-major because it results in an annual cost to the economy of between $58 and $72 million and does not cause any of the other adverse effects listed above. The RIA, formally entitled "Regulatory Impact Analysis in Support of a Final Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act," is available for inspection in the docket supporting this rulemaking. The RIA describes the steps used to estimate the total number of facilities affected by the regulation, the cost of the regulation on a per-facility and national basis, the estimated benefits of the regulation, and any potential economic impacts of the regulation. This section briefly discusses the findings of the RIA.

1. Number of Affected Facilities and Covered Chemicals

As discussed above, EPA reviewed data on chemical usage and storage available from several States and cities. The databases developed by the Los Angeles City Fire Department and by New Jersey's Right-to-Know program were used in the RIA to estimate the number of facilities, the number of chemicals, and the number of pounds of chemicals that would be reported under the different reporting threshold options. The data include information on a cross-section of facilities representing a large number of industries in both the manufacturing and non-manufacturing sectors, contain the largest number of individual observations relative to other available data, and are representative of a broad list of chemicals similar to those subject ot the OSHA HCS regulations.

EPA acknowledges that there is a certain degree of imprecision associated with extrapolations from regional data. For example, facilities in the City of Los Angeles may not be representative of facilities in other parts of the nation. To help compensate for this limitation, two separate regional databases were evaluated. The Agency extrapolated both data sets on an SIC code basis. That is, facilities in each SIC code were examined separately to estimate the number of facilities that would be likely to report at each threshold level and the number of chemicals likely to be reported. When the analysis was performed on an individual SIC code basis, the national estimates were derived separately for each database by aggregating the individual SIC code estimates. The extrapolation methodology, however, does assume that facilities in the City of Los Angeles and New Jersey in a particular SIC code are similar to facilities in other parts of the nation in that SIC code.

2. Estimated National Cost of the Alternative Thresholds

EPA has estimated the potential cost of each of the alternative reporting thresholds. The methodology follows the same general procedures that were used in support of the October 15, 1987 final rule, and uses the same unit cost estimates developed under that rulemaking. Only two adaptations have been made in the analysis. First, SERCs, LEPCs, and fire departments are assumed to have taken the steps to familiarize themselves with the reporting requirements, to have established recordkeeping systems, and to have developed any required public notices about the availability of data. Second, facilities currently subject to the rule are assumed to have developed the necessary recordkeeping and reporting systems.

The unit costs for manufacturers are assumed to vary by facility size, reflecting the greater number of hazardous chemicals present at larger facilities and the potential for more elaborate decision-making processes. Unit costs for non-manufacturers are assumed to be the same as those for small manufacturers (employment of less than 20). This assumption is based on the preponderance of small facilities in the non-manufacturing sector (about 80 percent of all non-manufacturing facilities employ fewer than 20 employees), as well as the small average number of hazardous chemicals located at such facilities.

Total costs are estimated in each year, using cost estimates expressed in 1987 dollars (that is, the analysis does not include inflation). The table below shows the total estimated expenditure in each year (in 1987 dollars), as well as

the present value costs and the equivalent annual cost for each of the six options.

SUMMARY OF ESTIMATED TOTAL COSTS, FISCAL YEARS 1990–2000

[Million dollars]

Option	Fiscal year		Present value costs	Equivalent annual costs
	1990 costs	1991 costs		
1: 50,000 lbs.	16–23	67–87	419–505	49–60
2: 10,000/500 or TPQ	3–14	55–74	457–606	54–72
3: 10,000/500/500 or TPQ	61–62	144–184	706–891	83–107
4: 2,000/500/500 or TPQ	81–97	188–247	800–1,066	102–126
5: 500 for all chemicals	113–136	294–336	905–1,326	116–158
6: zero for all chemicals	149	303	1,295	153

The final reporting threshold will be in effect beginning on October 17, 1990 for all sectors of industry. Because initial compliance with the requirements of section 311 was completed by April 1, 1989, only ongoing activities under section 311, such as submittal of revised or new MSDSs, are included in the cost calculations. Most of the costs presented in the table, therefore, are attributable to filing and processing the section 312 Tier I and Tier II forms.

B. Regulatory Flexibility Act

1. Purpose

Under the Regulatory Flexibility Act, whenever an agency issues a proposed or final rule, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Chapters 5 of the RIA supporting this rule addresses the impact of this rule on small businesses.

2. Certification

On the basis of the analysis contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

List of Subjects

40 CFR Part 350

Chemicals, Confidential business information, Hazardous substances, Superfund, Intergovernmental relations.

40 CFR Part 355

Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 370

Chemicals, Hazardous substances, Superfund, Reporting and recordkeeping requirements.

40 CFR Part 372

Chemicals, Reporting, and recordkeeping requirements.

Dated: July 9, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble, parts 350, 355, 370, and 372 of subtitle J of title 40 of the Code of Federal Regulations are amended as follows:

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION AND TRADE SECRET DISCLOSURE TO HEALTH PROFESSIONALS

1. The authority citation for part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048.

2. Section 350.1 is amended by adding the following definitions:

§ 350.1 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

* * * * *

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the tribe under whose jurisdiction the facility is located. In the absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

Local emergency planning committee or *committee* means the local emergency

planning committee appointed by the emergency response commission.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11045, 11048, 11049.

4. Section 355.20 is amended by revising the definitions of *commission* and *facility* and by adding the definitions, *Chief Executive Officer of the tribe, committee, Indian Country, Indian tribe,* and *state* to read as follows:

§ 355.20 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

Committee or Local emergency planning committee means the local emergency planning committee appointed by the emergency response commission.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdictions and Indian Country.

* * * * *

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

5. The authority citation for part 370 continues to read as follows:

Authority: 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

6. Section 370.2 is amended by revising the definitions of *facility, commission, Committee,* and *State* and by adding the definitions, *chief Executive Officer of the tribe, Indian Country,* and *Indian tribe* to read as follows:

§ 370.2 Definitions.

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the Tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

Committee or *local emergency planning committee* means the local emergency planning committee appointed by the emergency response commission.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include manmade structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

7. Section 370.20 is revised to read as follows:

§ 370.20 Applicability.

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(3) of this section, the minimum threshold level for reporting under this subpart shall be as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1990 (or within three months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and for all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

(2) The owner or operator of a facility subject to this subpart shall submit the Tier I form (or Tier II form) on or before March 1, 1991 (or March 1 of the first year after the facility first becomes a subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility at any one time during the preceding calendar year in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

(3) The minimum threshold for reporting in response to requests for submission of an MSDS or a Tier II form under §§ 370.21(d) and 370.25(c) of this part shall be zero.

8. Section 370.28 is revised to read as follows:

§ 370.28 Mixtures.

(a) *Basic reporting.* The owner or operator of a facility may meet the reporting requirements of §§ 370.21 (MSDS reporting) and 370.25 (inventory form reporting) of this subpart for a hazardous chemical that is a mixture of hazardous chemicals by:

(1) Providing the required information on each component in the mixture which is a hazardous chemical; or

(2) Providing the required information on the mixture itself, so long as the reporting of mixtures by a facility under § 370.25 is in the same manner as under § 370.21, where practicable.

(b) *Calculation of the quantity.* (1) If the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture.

(2) If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

(c) *Aggregation of extremely hazardous substances.* (1) To determine whether the reporting threshold for an extremely hazardous substance has been equaled or exceeded, the owner or operator of a facility shall aggregate the following:

(i) The quantity of the extremely hazardous substance present as a component in all mixtures at the facility, and

(ii) All other quantities of the extremely hazardous substance present at the facility.

If the aggregate quantity of an extremely hazardous substance equals or exceeds the reporting threshold, the substance shall be reported.

(2) If extremely hazardous substances are being reported and are components of a mixture at a facility, the owner or operator of a facility may report either:

(i) The mixture, as a whole, even if the total quantity of the mixture is below its reporting threshold; or

(ii) The extremely hazardous substance component(s) of the mixture.

9. Section 370.40 is revised to read as follows:

§ 370.40 Tier I emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25(a) of this part. In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier I Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Page ____ of ____ pages
Form Approved OMB No. 2050–0072

Revised June 1990

Tier One

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Aggregate Information by Hazard Type

FOR OFFICIAL USE ONLY: ID # | Date Received

Important: Read instructions before completing form

Reporting Period From January 1 to December 31, 19____

Facility Identification

Name
Street
City ____ County ____ State ____ Zip ____

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

Owner/Operator

Name
Mail Address
Phone ( )

Emergency Contacts

Name
Title
Phone ( )
24 Hour Phone ( )

Name
Title
Phone ( )
24 Hour Phone ( )

☐ Check if information below is identical to the information submitted last year.

☐ Check if site plan is attached

Physical Hazards

Hazard Type	Max Amount*	Average Daily Amount*	Number of Days On-Site	General Location
Fire	☐☐	☐☐	☐☐☐	
Sudden Release of Pressure	☐☐	☐☐	☐☐☐	
Reactivity	☐☐	☐☐	☐☐☐	

Health Hazards

Immediate (acute)	☐☐	☐☐	☐☐☐	
Delayed (Chronic)	☐☐	☐☐	☐☐☐	

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete.

Name and official title of owner/operator OR owner/operator's authorized representative

Signature ____ Date signed

* **Reporting Ranges**

Range Code	Weight Range in Pounds From...	To...
01	0	99
02	100	999
03	1000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

BILLING CODE 6560-50-C

Tier One Instructions

General Information

Submission of this form is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 312, Public Law 99-499, codified at 42 U.S.C. § 11022.

Certification

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete. On the Tier I form, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages in the submission, including all attachments.

The purpose of this form is to provide State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the past year.

You must provide all information requested on this form.

You may substitute the Tier Two form for this Tier One form. (The Tier Two form provides detailed information and must be submitted in response to a specific request from State or local officials.)

Who Must Submit This Form

Section 312 of Title III requires that the owner or operator of a facility submit this form if, under regulations implementing the Occupational Safety and Health Act of 1970, the owner or operator is required to prepare or have available Material Safety Data Sheets (MSDS) for hazardous chemicals present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at § 1910.1200.

This form does not have to be submitted if all of the chemicals located at your facility are excluded under Section 311(e) of Title III or if the weight of each covered hazardous chemical never equals or exceeds the minimum threshold listed in Title III Section 312 during the reporting year.

What Chemicals Are Included

You must report the information required on this form for every hazardous chemical for which you are required to prepare or have available an MSDS under the Hazard Communication Standard, unless the chemicals are excluded under Section 311(e) of Title III or they are below the minimum reporting thresholds.

What Chemicals Are Excluded

Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the exent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

Reporting Thresholds

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 3 of these instructions.

When To Submit This Form

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two Forms by March 1.

Where to Submit This Form

Send one completed inventory form to each of the following organizations:

1. Your State emergency response commission.
2. Your local emergency planning committee.
3. The fire department with jurisdiction over your facility.

Penalties

Any owner or operator of a facility who fails to submit or supplies false Tier One information shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation. In addition, any citizen may commence a civil action on his or her own behalf against any owner or operator who fails to submit Tier One information.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

You may use the Tier Two form as a worksheet for completing Tier One. Filling in the Tier Two chemical information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

Reporting Period

Enter the appropriate calendar year, beginning January 1 and ending December 31.

Facility Identification

Enter the complete name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that described the physical location of your facility (e.g., longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number of your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

Owner/Operator

Enter the owner's or operator's full name, mailing address, and phone number.

Emergency Contact

Enter the name, title, and work phone number of at least one local person or office that can act as a referral if emergency responders need assistance

in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

Identical Information

Check the box indicating identical information, located below the emergency contacts on the Tier One form, if the current information being reported is identical to that submitted last year. Chemical descriptions, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

Physical and Health Hazards

Descriptions, Amounts, and Locations

This section requires aggregate information on chemicals by hazard categories as defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200. For each hazard type, indicate the total amounts and general locations of all applicable chemicals present at your facility during the past year.

HAZARD CATEGORY COMPARISON FOR REPORTING UNDER SECTIONS 311 and 312

EPA's hazard categories	OSHA's hazard categories
Fire Hazard	Flammable
	Combustion Liquid
	Pyrophoric
	Oxidizer
Sudden Release of Pressure.	Explosive
	Compressed Gas
Reactive	Unstable Reactive
	Organic Peroxide
	Water Reactive
Immediate (Acute) Health Hazards.	Highly Toxic
	Toxic
	Irritant
	Sensitizer
	Corrosive
	Other hazardous chemicals with an adverse effect with short term exposure.
Delayed (Chronic) Health Hazard.	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure.

• What units should I use?

Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

•What about mixtures?

If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture of 5 lbs. of the hazardous chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold has been reached for an EHS, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHs.

•Where do I count a chemical that is a fire and reactive physical hazard and an immediate (acute) health hazard?

Add the chemical's weight to your totals for all three hazard categories and include its location in all three categories. Many chemicals fall into more than one hazard category.

Maximum Amount

The amounts of chemicals you have on hand may vary throughout the year. The peak weights—greatest single-day weights during the year—are added together in this column to determine the maximum weight for each hazard type. Since the peaks for different chemicals often occur on different days, this maximum amount will seem artificially high.

To complete this and the following sections, you may choose to use the Tier Two form as a worksheet.

To determine the Maximum Amount:

1. List all of your reportable hazardous chemicals individually.

2. For each chemical . . .

a. Indicate all physical and health hazards that the chemical presents. Include all chemicals, even if they are present for only a short period of time during the year.

b. Estimate the maximum weight in pounds that was present at your facility on any single day of the reporting period.

3. For each hazard type—beginning with Fire and repeating for all physical and health hazard types . . .

a. Add the maximum weights of all chemicals you indicated as the particular hazard type.

b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.

c. Enter this range value as the Maximum Amount.

Example: You are using the Tier Two form as a worksheet and have listed raw weights in pounds for each of your hazardous chemicals. You have marked an X in the immediate (acute) hazard column for phenol and sulfuric acid. The maximum amount raw weight you listed were 10,000 lbs. and 500 lbs. respectively. You add these together to reach a total of 10,500 lbs. Then you look at the Reporting Range at the bottom of your Tier One form and find that the value of 04 corresponds to 10,500 lbs. Enter 04 as your Maximum Amount for Immediate (acure) hazards materials.

You also marked an X in the Fire hazard box for phenol. When you calculate your Maximum Amount totals for fire hazards, add the 10,000 lb. weight again.

Average Daily Amount

This column should represent the average daily amount of chemicals *of each hazard type* that were present at or above applicable thresholds at your facility at any point during the year.

To determine this amount:

1. List all of your reportable hazardous chemicals individually (same as for Maximum Amount).

2. For each chemical . . .

a. Indicate all physical and health hazards that the chemical presents (same as for Maximum Amount).

b. Estimate the average weight in pounds that was present at your facility throughout the year. To do this, total all daily weights and divide by the number of days the chemical was present on the site.

3. For each hazard type—beginning with Fire and repeating for all physical and health hazards . . .

a. Add the average weights of all chemicals you indicated for the particular hazard type.

b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.

c. Enter this range value as the Average Daily Amount.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

Example: You are using the Tier Two form, and have marked an X in the immediate (acute) hazard column for nicotine and phenol. Nicotine is present at your facility 100 days during the year, and the sum of the daily weights is 100,000 lbs. By dividing 100,000 lbs. by 100 days on-site, you calculate an Average Daily Amount of 1,000 lbs. for nicotine. Phenol is present at your facility 50 days during the year, and the sum of the daily weights is 10,000 lbs. By dividing 10,000 lbs. by 50 days on-site, you calculate an Average Daily Amount of 200 lbs. for phenol. You then add the two average daily amounts together to reach a total of 1,200 lbs. Then you look at the Reporting Range on your Tier One form and find that the value 03 corresponds to 1,200 lbs. Enter 03 as your Average Daily Amount for Immediate (acute) Hazard.

You also marked an X in the Fire hazard column for phenol. When you calculate your Average Daily Amount for fire hazards, use the 200 lb. weight again.

Number of Days On-Site

Enter the greatest number of days that a single chemical within that hazard category was present on-site.

Example: At your facility, nicotine is present for 100 days and phosgene is present for 150 days. Enter 150 in the space provided.

General Location

Enter the general location within your facility where each hazard may be found. General locations should include the names or identifications of buildings, tank fields, lots, sheds, or other such areas.

For each hazard type, list the locations of all applicable chemicals. As an alternative you may also attach a site plan and list the site coordinates related to the appropriate locations. If you do so, check the Site Plan box.

Example: On your worksheet you have marked an X in the Fire hazard column for acetone and butane. You noted that these are kept in steel drums in Room C of the Main Building, and in pressurized cylinders in Storage Shed 13, respectively. You could enter Main Building and Storage Shed 13 as the General Locations of your fire hazards. However, you choose to attach a site plan and list coordinates. Check the Site Plan box at the top of the column and enter site coordinates for the Main Building and Storage Shed 13 under General Locations.

If you need more space to list locations, attach an additional Tier One form and continue your list on the proper line. Number all pages.

Certification

Instructions for this section are included on page one of these instructions.

10. Section 370.41 is revised to read as follows:

§ 370.41 Tier II emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25 of this part. In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier II Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Revised June 1990

Page _____ of _____ pages
Form Approved OMB No. 2050-0072

Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Specific Information by Chemical

Facility Identification

Name _____
Street _____
City _____ County _____ State _____ Zip _____
SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID #
Date Received

Owner/Operator Name

Name _____ Phone ( )
Mail Address _____

Emergency Contact

Name _____ Title _____
Phone ( ) 24 Hr. Phone ( )

Name _____ Title _____
Phone ( ) 24 Hr. Phone ( )

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

☐ Check if information below is identical to the information submitted last year.

Chemical Description

CAS ☐☐☐☐☐☐-☐☐-☐ Trade Secret ☐
Chem. Name _____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name _____

Physical and Health Hazards
(check all that apply)

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

Inventory

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Storage Codes and Locations (Non-Confidential)

Container Type | Temperature | Pressure | *Storage Locations*

Codes

CAS ☐☐☐☐☐☐-☐☐-☐ Trade Secret ☐
Chem. Name _____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name _____

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Container Type | Temperature | Pressure | *Storage Locations*

Codes

CAS ☐☐☐☐☐☐-☐☐-☐ Trade Secret ☐
Chem. Name _____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name _____

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Container Type | Temperature | Pressure | *Storage Locations*

Codes

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

Optional Attachments

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations
☐ I have attached a description of dikes and other safeguard measures

BILLING CODE 6560-50-C

Page ______ of ______ pages
Form Approved OMB No. 2050-0072

Tier Two

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Specific Information by Chemical

Facility Identification

Name ____________________
Street ____________________
City __________ County __________ State ______ Zip ______
SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID # ____________________
Date Received ____________________

Owner/Operator Name

Name ____________________ Phone (   ) __________
Mail Address ____________________

Emergency Contact

Name ____________________ Title ____________________
Phone (   ) __________ 24 Hr. Phone (   ) __________

Name ____________________ Title ____________________
Phone (   ) __________ 24 Hr. Phone (   ) __________

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

☐ Check if information below is identical to the information submitted last year.

Confidential Location Information Sheet

Storage Codes and Locations (Confidential)

Container Type | Temperature | Pressure

Storage Locations

Optional

CAS # ☐☐☐☐☐☐ ☐☐ ☐ Chem. Name
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐

CAS # ☐☐☐☐☐☐ ☐☐ ☐ Chem. Name
☐☐☐ ____________________
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CAS # ☐☐☐☐☐☐ ☐☐ ☐ Chem. Name
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐☐☐ ____________________
☐

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through ________, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative ____________________
Signature ____________________
Date signed ____________________

Optional Attachments

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations
☐ I have attached a description of dikes and other safeguard measures

Tier Two Instructions

General Information

Submission of this Tier Two form (when requested) is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499, codified at 42 U.S.C. Section 11022. The purpose of this Tier Two form is to provide State and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

Certification

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Non-Confidential Information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

You Must Provide All Information Requested on This Form to Fulfill Tier Two Reporting Requirements

This form may also be used as a worksheet for completing the Tier One form or may be submitted in place of the Tier One form.

Who Must Submit This Form

Section 312 of Title III requires that the owner or operator of a facility submit this Tier Two form if so requested by a State emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility.

This request may apply to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at § 1910.1200.

This form does not have to be submitted if all of the chemicals located at your facility are excluded under Section 311(e) of Title III.

What Chemicals are Included

If you are submitting Tier Two forms in lieu of Tier One, you must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

If you elect to submit Tier One rather than Tier Two, you may still be required to submit Tier Two information upon request.

What Chemicals are Excluded

Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, § 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

Reporting Thresholds

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower;

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

A requesting official may limit the responses required under Tier Two by specifying particular chemicals or groups of chemicals. Such requests apply to hazardous chemicals regardless of established thresholds.

Instructions

Please read these instructions carefully. Print or Type all Responses

When to Submit This Form

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two forms by March 1.

If you choose to submit Tier One, rather than Tier Two, be aware that you may have to submit Tier Two information later, upon request of an authorized official. You must submit the Tier Two form within 30 days of receipt of a written request.

Where to Submit This Form

Send either a completed Tier One form or Tier Two form(s) to each of the following organizations:

1. Your State Emergency Response Commission.

2. Your Local Emergency Planning Committee.

3. The fire department with jurisdiction over your facility.

If a Tier Two form is submitted in response to a request, send the completed form to the requesting agency.

Penalties

Any owner or operator who violates any Tier Two reporting requirements shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the top of the form.

Reporting Period

Enter the appropriate calendar year, beginning January 1 and ending December 31.

Facility Identification

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

Owner/Operator

Enter the owner's or operator's full name, mailing address, and phone number.

Emergency Contact

Enter the name, title, and work phone number at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. The requirement is mandatory. The facility must make some arrangement to ensure a 24 hour contact is available.

Identical Information

Check the box indicating indentical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

Chemical Information: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemical descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

Calculated all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixuture that is a particular hazardous chemcial (e.g., if a hazardous solution weights 100 lbs. but is composed of only 5% of a particular hazardous chemcial, you can indicate either 100 lbs. of the mixture *or* 5 lbs. of the chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated and purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

Chemical Description

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of as many constituent chemicals as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toulene diisocyanate as organic isocyanate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.

3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.

4. If the chemical is a mixture containing an EHS, enter the chemical name of each EHS in the mixture.

Example: You have pure chlorine as on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix"—as well as "liquid" and "gas".

Physical and Health Hazards

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

HAZARD CATEGORY COMPENSATION FOR REPORTING UNDER SECTIONS 311 AND 312

EPA's hazard categories	OSHA's hazard categories
Fire Hazard	Flammable
	Combustion Liquid
	Pyrophoric
	Oxidizer
Sudden Release of Pressure.	Explosive
	Compressed Gas
Reactive	Unstable Reactive
	Organic Peroxide
	Water Reactive
Immediate (Acute) Health Hazards.	Highly Toxic
	Toxic
	Irritant
	Sensitizer
	Corrosive
	Other hazardous chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard.	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure

Maximum Amount

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.

2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.

TABLE I—REPORTING RANGES

Range value	Weight range in pounds	
	From	To
01	0	99
02	100	999

TABLE I—REPORTING RANGES—Continued

Range value	Weight range in pounds	
	From	To
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

If you are using this form as a worksheet for completing Tier One, enter the actual weight in pounds in the shaded space below the response blocks. Do this for both Maximum Amount and Average Daily Amount.

Example: You received one large shipment of a solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18,225. You enter 04 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 18,255 in the shaded area.)

Average Daily Amount

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

Example: The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on-site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

Number of Days On-Site

Enter the number of days that the hazardous chemical was found on-site.

Example: The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

Storage Codes and Storage Locations

List all non-confidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

a. *Look at Table II.* For each location, find the appropriate storage type and enter the corresponding code in the first box.

b. *Look at Table III.* For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II—STORAGE TYPES

Codes	Types of storage
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or non-metallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

TABLE III—TEMPERATURE AND PRESSURE CONDITIONS

Codes	Storage conditions
	(Pressure)
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
	(Temperature)
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

Example: The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C 1 6

Storage Locations: Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.

b. *A list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.

c. *A description of dikes and other safeguard measures* for storage locations throughout your facility.

Example: You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G–2, tank field 10 = B–6. Fill in the Storage Location as follows:

B–6 [Tank 2] G–2 [Main room]

Confidential Information

Under Title III. Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word "confidential" in the Non-Confidential Location section of the Tier Two form on the first line of the storage locations.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for non-confidential locations.
- Attach the Tier Two Confidential Location Information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

Certification

Instructions for this section are included on page one of these instructions.

9. Section 370.40 is revised to read as follows:

§ 370.40 Tier I emergency and hazardous chemical inventory form.

PART 372—TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

11. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013, 11028.

12. Section 372.3 is amended by adding definitions to read as follows:

§ 372.3 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and includng rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

13. Section 372.30 is amended by revising paragraph (a) to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350–1) in accordance with subpart E. If the covered facility is located in Indian Country, the facility shall submit a completed EPA Form R as described above to EPA and the official designated by the Chief Executive Officer of the applicable Indian tribe, unless the tribe has entered into a cooperative agreement with a State, in which case, the facility shall submit the completed EPA Form R to the receiving entity designated in the cooperative agreement.

* * * * *

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Thursday
July 26, 1990

Part IV

Department of Transportation

Coast Guard

46 CFR Part 2 et al.

Replacement of References to SOLAS 60 With SOLAS 74; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 24, 30, 31, 33, 50, 70, 71, 75, 80, 90, 91, 94, 107, 109, 146, 153, 154, 167, 175, 176, 188, 189, and 192.

[CGD 90-008]

RIN 2115-AC46

Replacement of References to SOLAS 60 with SOLAS 74

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In 1980 the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) replaced the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60). This rulemaking updates 80 references to SOLAS 60 in Title 46 to SOLAS 74. These changes which are already in practice are primarily administrative in nature.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: LCDR Steve Johnson, Marine Technical and Hazardous Materials Division, (202) 267-2997.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation. The changes in this rulemaking have already been implemented in practice, and, therefore, consistent with 5 U.S.C. 553(b)(B), the Coast Guard finds notice and public procedure are impracticable, unnecessary, or contrary to public interest.

Drafting Information

The principal persons involved in drafting this document are LCDR Steve Johnson, Project Manager, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background

SOLAS 60 was replaced and abrogated between contracting governments by Article VI of SOLAS 74 which entered into force for the United States on May 25, 1980 by Executive Order 12234 of September 3, 1980. The Executive Order directed the Coast Guard to promulgate regulations necessary to implement the provisions of the Convention. This rulemaking implements the administrative aspects of the new Convention.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so mininal that a full regulatory evaluation is unnecessary.

Since the changes included in this rulemaking have already been implemented in practice, there is no cost involved as a result of the changes. The benefit of this rulemaking will be up to date references in the regulations which will help to eliminate any confusion over which Convention is in force.

Regulatory Flexibility Act

The impact of this final rule is not significant. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no new or additional information collection or recordkeeping requirements upon the public.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Those actions performed as a part of Coast Guard operations to carry out statutory authority in the areas of maritime safety which do not normally have a significant effect on the quality of the human environment are categorically excluded in accordance with section 2.B.2., of Commandant Instruction M16475.1B. The Coast Guard has considered the environmental impact of the final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and included in the rulemaking docket.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 33

Cargo vessels, Marine Safety, Occupational safety and health, Seamen.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 75

Marine safety, Passenger vessels.

46 CFR Part 80

Advertising, Marine safety, Passenger vessels, Penalties, Travel.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 94

Cargo vessels, Marine safety.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 192

Marine safety, Oceanographic research vessels.

For the reasons set forth in the preamble, 46 CFR parts 2, 24, 30, 31, 33, 50, 70, 71, 75, 80, 90, 91, 94, 107, 109, 146, 153, 154, 167, 175, 176, 188, 189, and 192 are amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115, 8105, E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

2. Section 2.01–6 is amended by revising paragraphs (a)(1), (a)(3) and (a)(4) and (b)(1) to read as follows:

§ 2.01–6 Certificate issued to foreign vessels.

(a) * * *

(1) CG–4504—Control Verification for Foreign Vessel—issued to a foreign vessel that is registered in a country which is signatory to the International Convention for the Safety of Life at Sea, 1974.

* * * * *

(3) CG–840S–1—Tank Vessel Examination Letter—issued to a foreign vessel that is suitable for carriage of cargoes as defined in 46 Code of Federal Regulations, subchapter D and is in compliance with Tankship Cargo Venting and Handling Systems and Minimum Safety Standards (SOLAS 74—46 CFR part 35), Pollution Prevention Regulations and Transfer Procedures (33 CFR parts 155, 156, 157 and 159), and Navigation Safety Regulations (33 CFR part 164).

(4) Foreign vessels of countries which are nonsignatory to the International Convention for the Safety of Life at Sea, 1974, are issued a Temporary Certificate of Inspection (CG–854) and a Certificate of Inspection (CG–841) as described in § 2.01–5.

(b) *Description of Certificates.* (1) CG–4504—Control Verification for Foreign Vessels—describes the vessel, type of certificate required by the International Convention for the Safety of Life at Sea, 1974, country issued by, and its expiration date. The period of validity of a control verification for foreign vessel is stated on the certificate.

* * * * *

3. Section 2.01–7 is amended by revising Table 2.01–7(a), footnote 6, to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

(a) * * *

Table 2.02–7(a) * * *

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

4. Section 2.01–8 is amended by revising paragraph (a) to read as follows:

§ 2.01–8 Application of regulations to vessels or tankships on an international voyage.

(a) Where, in various places or portions in this chapter, requirements are stipulated specifically for "vessels on an international voyage" or "tankships on an international voyage," it is intended that these requirements apply only to vessels or tankships, as applicable, which are subject to the International Convention for Safety of Life at Sea, 1974.

* * * * *

5. Section 2.01–25 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) *Certificates required.* (1) The International Convention for Safety of Life at Sea, 1974, requires one or more of the following certificates to be carried on board certain passenger, cargo or tankships engaged in international voyages:

* * * * *

PART 24—[AMENDED]

6. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

7. Section 24.05–1 is amended by revising Table 24.05–1(a), footnote 6, to read as follows:

§ 24.05–1 Vessels subject to the requirements of this subchapter.

(a) * * *

Table 24.05–1(a) * * *

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

8. Section 24.10–13 is revised to read as follows:

§ 24.10–13 International voyage.

(a) This section describes those voyages which are considered to be "international voyages" for the purposes of this subchapter.

(b) Except as provided in paragraph (c) of this section, the term "international voyage" as used in this subchapter shall have the same meaning as that contained in Regulation 2(d), chapter I of the International Convention for Safety of Life at Sea, 1974, i.e., "*International voyage* means a voyage from a country to which the present convention applies to a port outside such country, or conversely."

(c) The International Convention for Safety of Life at Sea, 1974, does not apply to vessels "solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63d Meridian." Accordingly, such vessels shall not be considered as being on an "international voyage" for the purpose of this subchapter.

(d) In addition, although voyages between the continental United States and Hawaii or Alaska, and voyages between Hawaii and Alaska are not "international voyages" under the provisions of the International Convention for Safety of Life at Sea, 1974, such voyages are similar in nature and shall be considered as "international voyages" for the purposes of this subchapter.

PART 30—[AMENDED]

9. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3507, 3703; 49 U.S.C. 1804; 49 CFR 1.46.

10. Section 30.01–5 is amended by revising Table 30.01–5(d), footnote 6, and paragraph (e)(1) to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(d) * * *

Table 30.01–5(d) * * *

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

(e) * * *

(1) A vessel of a foreign nation signatory to the International Convention for Safety of Life at Sea, 1974, which has on board a current valid Safety Equipment Certificate, or a vessel of a foreign nation having inspection laws approximating those of the United States, together with reciprocal inspection arrangements with the United States and which has on board a current valid certificate of inspection issued by its government under such arrangements, in either case, shall be subject only to the requirements of § 35.01–1 and the safety and cargo handling requirements in subparts 35.30 and 35.35 of this subchapter. In addition, these vessels shall report marine casualties occurring while they are in the navigable waters of the United States as required by subpart 35.15.

* * * * *

11. Section 30.01–6 is amended by revising paragraph (a) to read as follows:

§ 30.01–6 Application to vessels on an international voyage.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, the regulations in this subchapter that apply to a vessel on an "international voyage" apply to a vessel that:

(1) Is mechanically propelled and of at least 500 gross tons; and

(2) Is engaged on a voyage:

(i) From a country to which the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) applies, to a port outside that country or the reverse;

(ii) From any territory, including the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate, whose international relations are the responsibility of a contracting SOLAS 74 government, or which is administered by the United Nations, to a port outside that territory or the reverse; or

* * * * *

PART 31—[AMENDED]

12. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

13. The heading of subpart 31.40 is revised to read as follows:

Subpart 31.40—Certificates Under International Convention for Safety of Life at Sea, 1974

* * * * *

14. Section 31.40–5 is amended by revising paragraph (a) to read as follows:

§ 31.40–5 Cargo Ship Safety Construction Certification—T/ALL.

(a) All tankships on an international voyage are required to have a Cargo Ship Safety Construction Certificate. This certificate shall be issued by the U.S. Coast Guard or the American Bureau of Shipping to certain vessels on behalf of the United States of America as provided in Regulation 12, Chapter I, of the International Convention for Safety of Life at Sea, 1974.

* * * * *

15. Section 31.40–5 is amended by revising paragraph (a) to read as follows:

§ 31.40–45 American Bureau of Shipping—T/ALL.

(a) The American Bureau of Shipping, with its home office at 45 Eisenhower Drive, Paramus, NJ 07653–0910, is hereby designated as an organization duly authorized to issue the "Cargo Ship Safety Construction Certificate" to certain tankships on behalf of the United States of America as provided in Regulation 12, chapter I, of the International Convention for Safety of Life at Sea, 1974, and executive order 12234 and the certificate shall be subject to the requirements in this subpart. The American Bureau of Shipping is authorized to place the official seal of the United States of America on the certificate. This designation and delegation to the American Bureau of Shipping shall be in effect from May 26, 1965, until terminated by proper authority and notice of cancellation is published in the **Federal Register.**

PART 33—[AMENDED]

16. The authority citation for part 33 continues to read as follows:

Authority: 46 U.S.C. 3102, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

17. Section 33.15–10 is amended by revising paragraph (m) to read as follows:

§ 33.15–10 Description of equipment for lifeboats—TB/ALL.

* * * * *

(nn) **Table of lifesaving signals.** The table of lifesaving signals shall be in accordance with the provisions of Chapter V, Regulation 16, of the International Convention for Safety of Life at Sea, 1974, and shall be printed on water resistant paper.

* * * * *

PART 50—[AMENDED]

18. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O., 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

19. Section 50.05–15 is amended by revising paragraph (a)(1) to read as follows:

§ 50.05–15 Vessels subject to regulations in this subchapter.

(a) * * *

(1) Any vessel of a foreign nation signatory to the International Convention for Safety of Life at Sea, 1974, and which has on board a current, valid Convention certificate attesting to the sufficiency of the marine engineering details as prescribed by applicable regulations in this chapter.

* * * * *

PART 70—[AMENDED]

20. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

21. Section 70.05–1 is amended by revising footnote 6 of table 70.05–1(a) to read as follows:

§ 70.05–1 United States flag vessels subject to the requirements of this subchapter.

(a) * * *

Table 70.05–1(a) * * *

[6] Any vessel on an international voyage is subject to the requirements of the

International Convention for Safety of Life at Sea, 1974.

* * * * *

22. Section 70.05–3 is amended by revising paragraphs (b)(1) and (e) to read as follows:

§ 70.05–3 Foreign vessels subject to the requirements of this subchapter.

* * * * *

(b) * * *

(1) Any vessel of a foreign nation signatory to the International Convention for Safety of Life at Sea, 1974, and which has on board a current valid safety certificate; or,

* * * * *

(e) Not withstanding the other provisions of this section, foreign passenger vessels of over 100 gross tons having berth or stateroom accommodations for more than 50 persons and departing a United States port with passengers who are United States nationals and who embarked at that port shall comply with the provisions of the International Convention for Safety of Life at Sea, 1974.

* * * * *

23. Section 70.05–10 is amended by revising paragraphs (a)(2) (i) and (ii) to read as follows:

§ 70.05–10 Application to vessels on an international voyage.

(a) * * *

(2) * * *

(i) From a country to which the International Convention for Safety of Life at Sea, 1974, (SOLAS 74) applies, to a port outside that country or the reverse;

(ii) From any territory, including the Commonwealth of Puerto Rico, all possessions of the United States and all lands held by the United States under a protectorate or mandate, whose international relations are the responsibility of a contracting SOLAS 74 government, or which is administered by the United Nations, to a port outside that territory or the reverse; or

* * * * *

PART 71—[AMENDED]

24. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1974–1975 Comp., p. 793; 49 CFR 1.46.

25. Section 71.75–10 is amended by revising paragraph (c) to read as follows:

§ 71.75–10 Exemption Certificate.

* * * * *

(c) Nuclear vessels cannot be exempted from any requirements of the International Convention for Safety of Life at Sea, 1974.

PART 75—[AMENDED]

26. The authority citation for part 75 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

27. Section 75.20–15 is amended by revising paragraph (pp) to read as follows:

§ 75.20–15 Description of equipment of lifeboats.

* * * * *

(pp) *Table of lifesaving signals.* The table shall be in accordance with the provisions of chapter V, Regulation 16, of the International Convention for Safety of Life at Sea, 1974, and shall be printed on water resistant paper.

* * * * *

PART 80—[AMENDED]

28. The authority citation for part 80 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

29. Section 80.20 is amended by revising paragraph (a) to read as follows:

§ 80.20 Exception to requirements.

(a) This part does not apply to vessels that comply with the safety standards set forth in the International Convention for Safety of Life at Sea, 1974.

* * * * *

PART 90—[AMENDED]

30. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

31. Section 90.05–1 is amended by revising paragraph (a)(1) and footnote 6 of Table 90.05–1(a) to read as follows:

§ 90.05–1 Vessels subject to the requirements of this subchapter.

(a) * * *

(1) Any vessel of a foreign nation signatory to the International Convention for Safety of Life at Sea, 1974, and which has on board a current, valid safety equipment certificate.

* * * * *

Table 90.05–1(a) * * *

[6]Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

32. Section 90.05–10 is amended by revising paragraphs (a)(2) (i) and (ii) to read as follows:

§ 90.05–10 Application to vessels on an international voyage.

(a) * * *

(2) * * *

(i) From a country to which the International Convention for Safety of Life at Sea, 1974, (SOLAS 74) applies, to a port outside that country or the reverse;

(ii) From any territory, including the Commonwealth of Puerto Rico, all possessions of the United States and all lands held by the United States under a protectorate or mandate, whose international relations are the responsibility of a contracting SOLAS 74 government, or which is administered by the United Nations, to a port outside the territory or the reverse; or

* * * * *

PART 91—[AMENDED]

33. The authority citation for part 91 continues to read as follows:

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321(j); E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

34. Subpart 91.60 is amended by revising the heading to read as follows:

Subpart 91.60—Certificates Under International Convention for Safety of Life at Sea, 1974

35. Section 91.60–5 is amended by revising paragraph (a) to read as follows:

§ 91.60–5 Cargo Ship Safety Construction Certificate.

(a) All vessels on an international voyage are required to have a Cargo Ship Safety Construction Certificate. This certificate shall be issued by the U.S. Coast Guard or the American Bureau of Shipping to certain vessels on behalf of the United States of America as provided in Regulation 12, Chapter I, of the International Convention for Safety of Life at Sea, 1974.

* * * * *

36. Section 91.60–5 is amended by revising paragraph (a) to read as follows:

§ 91.60–45 American Bureau of Shipping.

(a) The American Bureau of Shipping, with its home office at 45 Eisenhower Drive, Paramus, NJ 07653–0910, is hereby designated as an organization duly authorized to issue the "Cargo Ship Safety Construction Certificate" to certain cargo ships on behalf of the

United States of America as provided in Regulation 12, Chapter I, of the International Convention for Safety of Life at Sea, 1974, and Executive Order 12234 and the certificate shall be subject to the requirements in this subpart. The American Bureau of Shipping is authorized to place the official seal of the United States of America on the certificate. This designation and delegation to the American Bureau of Shipping shall be in effect until terminated by proper authority and notice of cancellation is published in the Federal Register.

* * * * *

PART 94—[AMENDED]

37. The authority citation for part 94 continues to read as follows:

Authority: 46 U.S.C. 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

38. Section 94.10–1 is amended by revising paragraph (d) to read as follows:

* * * * *

§ 94.10–1 Application.

(d) In the case of special types of vessels subject to the Intenational Convention for Safety of Life at Sea, 1974, which are not specifically treated in this subpart, such as whale factory ships, fish processing and canning ships, etc., the Commandant may give special consideration as to lifesaving equipment requirements to the extent permitted by the International Convention for Safety of Life at Sea, 1974.

39. Section 94.20–15 is amended by revising paragraph (nn) to read as follows:

§ 94.20–15 Description of equipment for lifeboats.

* * * * *

(nn) *Table of lifesaving signals.* The table shall be in accordance with the provisions of Chapter V, Regulation 16, of the International Convention for Safety of Life at Sea, 1974, and shall be printed on water resistant paper.

* * * * *

PART 107—[AMENDED]

40. The authority citation for Part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

41. Subpart D is amended by revising the heading to read as follows:

Subpart D—Certificates Under International Convention for Safety of Life at Sea, 1974

42. Section 107.401 is amended by revising paragraphs (a) and (b) to read as follows:

§ 107.401 Purpose and definition.

(a) The International Convention for Safety of Life at Sea, 1974, requires one or more of the certificates described in this subpart to be carried on self-propelled vessels of 500 gross tons or over engaged in international voyages. This subpart prescribes rules for the issuance of these certificates to mobile offshore drilling units.

(b) "International voyage" has the same meaning as stated in Regulation 2(d) of Part A, Chapter I in the International Convention for Safety of Life at Sea, 1974. (SOLAS 74), which is: "a voyage from a country to which the present Convention applies to a port outside such country, or conversely. The Coast Guard has interpreted this definition to include the following:

(1) A voyage from a country to which SOLAS 1974 applies, to a port outside that country or the reverse;

(2) A voyage from any territory, including the Commonwealth of Puerto Rico, all possesssions of the United States, and all lands held by the United States under a protectorate or mandate, whose international relations are the responsibility of a contracting SOLAS 74 government, or which is administered by the United Nations, to a port outside that territory or the reverse;

* * * * *

43. Section 107.405 is amended by revising paragraph (a) to read as follows:

§ 107.405. Safety Equipment Certificate.

(a) A self-propelled unit of at least 500 gross tons that engages in international voyages is issued a safety equipment certificate if the inspector issues it a certificate of inspection under § 107.211 or § 107.215 and it meets Chapter 3 of the International Convention for Safety of Life at Sea, 1974.

* * * * *

44. Section 107.409 is amended by revising paragraph (b) to read as follows:

§ 107.409 Safety construction certificate.

* * * * *

(b) The American Bureau of Shipping or the Coast Guard may issue a self-propelled unit of at least 500 gross tons that engages on international voyages a Safety Construction Certificate if the unit meets the requirements in Regulation 12 (a)(ii), Chapter I of the International Convention for Safety of Life at Sea, 1974.

* * * * *

45. Section 107.413 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 107.413 Exemption certificate.

(a) An owner or operator of a unit may request an exemption from the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) by writing to the appropriate OCMI.

(b) The Commandant (G–MVI) may exempt a self-propelled unit of at least 500 gross tons on an international voyage from any of the requirements in the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) if the unit meets the conditions of Regulation 4 of Part A, Chapter I, of SOLAS 74 which states the following:

a. A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Administration from any of the requirements of the present Regulations provided that it complies with safety requirements which are adequate in the opinion of the Administration for the voyage which is to be undertaken by the ship.

b. The Administration may exempt any ship which embodies features of a novel kind from any of the provisions of Chapters II–1, II–2, III and IV of these Regulations the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages. Any such ship shall, however, comply with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship and which are acceptable to the Governments of the States to be visited by the ship. The Administration which allows any such exemption shall communicate to the Organization particulars of same and the reasons therefor which the Organization shall circulate to the Contracting Governments for their information.

(c) The Commandant (G–MVI) may exempt a self-propelled unit of at least 500 gross tons on an international voyage from the requirements of Chapter III (Lifesaving Appliances, &C.) of SOLAS 74 if the unit meets the conditions of Regulation 2 of chapter III which states in part:

The Administration may, if it considers that the sheltered nature and conditions of the voyage are such as to render the application of any specific requirements of this chapter unreasonable or unnecessary, exempt from those requirements individual ships or classes of ships which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

(d) The Commandant (G–MVI) may exempt a unit from the requirements of Chapters II–1 (Construction—Subdivision and stability, machinery and electrical installations) or II–2 (Construction—Fire protection, fire detection and fire extinction) of SOLAS 74 if the unit meets the conditions of Regulation 1–4 of Part A Chapter II–1 or Regulation 1–4.1 of Part A Chapter II–2, respectively, of SOLAS 74 which state the following: The Administration of a State may, if it considers that the sheltered nature and conditions of the voyage are such as to render the application of any specific requirements of this chapter unreasonable or unnecessary, exempt from those requirements individual ships or classes of ships entitled to fly the flag of the State which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

* * * * *

PART 109—[AMENDED]

46. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

47. Section 109.103 is amended by revising the heading to read as follows:

§ 109.103 Requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

PART 146—[AMENDED]

48. The authority citation for part 146 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1904; 49 CFR 1.45, 1.46; § 146.01–5 also issued under the authority of 44 U.S.C. 3507.

49. Section 146.01–1 is revised to read as follows:

§ 146.01–1 Purpose of regulations.

The purpose of the regulations in this subchapter is to promote safety in the handling, stowage, storage and transportation of military explosives as defined herein, on board vessels on any navigable waters within the limits of the jurisdiction of the United States including its territories and possessions and to make more effective the provisions of the International Convention for the Safety of Life at Sea, 1974, relative to the carriage of dangerous goods.

PART 153—[AMENDED]

50. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

51. Section 153.9 is amended by revising paragraph (b)(1) to read as follows:

§ 153–9 Foreign flag vessel endorsement application.

* * * * *

(b) * * *

(1) a copy of the vessel's Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate issued under the International Convention for Safety of Life at Sea, 1974.

* * * * *

PART 154—[AMENDED]

52. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 154.1802 is amended by revising paragraph (c)(1) to read as follows:

§ 154.1802 Certificates, letters and endorsements: Foreign flag vessels.

* * * * *

(c) * * *

(1) The vessel's Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate issued under the International Convention for Safety of Life at Sea, 1974.

* * * * *

PART 167—[AMENDED]

54. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

55. Section 167.01–5 is amended by revising paragraph (c) to read as follows:

§ 167.01–5 Application of regulations.

* * * * *

(c) Documented nautical school ships of 500 gross tons or more, on international voyages, shall comply with the standards of the International Convention for Safety of Life at Sea, 1974, for cargo vessels.

56. Section 167.35–2 is amended by revising paragraph (a) to read as follows:

§ 167.35–2 Inflatable liferafts.

(a) On all vessels of less than 3000 gross tons, except those required to meet the standards of the International Convention for Safety of Life at Sea, 1974, the Officer in Charge, Marine Inspection, upon request of the master, owner or agent, may permit substitution of approved inflatable liferafts for lifeboats. The criteria to be used by the Officer in Charge, Marine Inspection, in determining substitutions to be permitted will be in accordance with substitutions permitted in Subchapter H (Passenger Vessels) of this chapter.

* * * * *

57. Section 167.60–1 is amended by revising paragraph (d) to read as follows:

§ 167.60–1 Issuance by Officer in Charge, Marine Inspection.

* * * * *

(d) Documented vessels of 500 gross tons or more, certificated for ocean or coastwise service, which do not comply with the requirements of SOLAS 74 for cargo vessels shall have their certificate of inspection endorsed "Domestic Voyages Only."

PART 175—[AMENDED]

58. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 175.01–3 also issued under the authority of 44 U.S.C. 3507.

59. Section 175.05–1 is amended by revising Table 175.05–1, footnote 6, and paragraph (c) to read as follows:

§ 175.05–1 Applicability to United States vessels.

(a) * * *

Table 175.05–1 * * *

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

(c) *S and L:* Nothing in the regulations in this subchapter shall be construed as exempting any mechanically propelled vessel, other than a yacht, which carries more than 12 passengers on an international voyage from the applicable requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

60. Section 175.05–3 is amended by revising paragraph (b)(1) to read as follows:

§ 175.05–3 Applicability to foreign vessels.

* * * * *

(b) * * *

(1) Vessels of a foreign nation signatory to the International Convention for Safety of Life at Sea,

1974, and which have on board a current, valid Safety Certificate; or,

* * * * *

PART 176—[AMENDED]

61. The authority citation for part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

62. Subpart 176.35 is amended by revising the heading to read as follows:

Subpart 176.35—International Convention for Safety of Life at Sea, 1974

63. Section 176.35–1 is revised to read as follows:

§ 176.35–1 Vessels subject to requirements.

(a) Except as otherwise provided in this subpart, all mechanically propelled vessels registered in the United States or the Commonwealth of Puerto Rico, which carry more than 12 passengers on an international voyage as defined in 176.35–5 or 176.35–10 shall be in compliance with the applicable requirements of the International Convention for Safety of Life at Sea, 1974.

(b) The International Convention for Safety of Life at Sea, 1974, does not apply to vessels "solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63d Meridian."

(c) In accordance with Regulation 4, Chapter I (General Provisions) of the International Convention for Safety of Life at Sea, 1974, a vessel which is not normally engaged on an international voyage but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Commandant from any of the requirements of the Regulations of the Convention: Provided, That it complies with safety requirements which are adequate in his opinion for the voyage which is to be undertaken.

(d) In accordance with Regulation 1–4 of Part A, Chapter II–1 (Construction—Subdivision and stability, machinery and electrical installations) or Regulation 1–4.1 of Part A, Chapter II–2 (Construction—Fire protection, fire detection and fire extinction) of the International Convention for Safety of Life at Sea, 1974, the Commandant may, if he considers that the sheltered nature and conditions of the voyage are such as to render the application of any specific requirements of Chapters II–1 or II–2 of this Convention unreasonable or unnecessary, exempt from those requirements individual vessels or classes of vessels which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

(e) In accordance with Regulation 2–1 of Chapter III (Lifesaving Appliances, etc.) of the International Convention for Safety of Life at Sea, 1974, the Commandant, if he considers that the sheltered nature and conditions of the voyage are such as to render the application of the full requirements of Chapter III of this Convention unreasonable or unnecessary, may to that extent exempt from the requirements of Chapter III individual vessels or classes of vessels which, in the course of their voyage, do not go more than 20 miles from the nearest land.

64. Section 176.35–5 is revised to read as follows:

§ 176.35–5 International voyage.

(a) This section describes those voyages which are considered to be "international voyages" for the purposes of this subchapter.

(b) Except as provided in paragraph (c) of this section, the term "international voyage" as used in this subchapter shall have the same meaning as that contained in Regulation 2(d), Chapter I of the International Convention for Safety of Life at Sea, 1974, i.e., *"International voyage* means a voyage from a country to which the present convention applies to a port outside such country, or conversely."

(c) The International Convention for Safety of Life at Sea, 1974, does not apply to vessels "solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63d Meridian." Accordingly, such vessels shall not be considered as being on an "international voyage" for the purpose of this subchapter.

(d) In addition, although voyages between the continental United States and Hawaii or Alaska, and voyages between Hawaii and Alaska are not "international voyages" under the provisions of the International Convention for Safety of Life at Sea, 1974, such voyages are similar in nature and shall be considered as "international voyages" for the purposes of this subchapter.

65. Section 176.35–10 is amended by revising paragraph (a) to read as follows:

§ 176.35–10 Voyage between continental United States and Hawaii or Alaska or between Hawaii and Alaska.

(a) Although voyages between the continental United States and Hawaii or Alaska, and voyages between Hawaii and Alaska are not "international voyages" under the provisions of the International Convention for Safety of Life at Sea, 1974, such voyages are similar in nature and shall be considered as "international voyages" for the purposes of this subchapter.

PART 188—[AMENDED]

66. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 5115; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

67. Section 188.05–1(a) is amended by revising Table 188.05–1(a), footnote 6, to read as follows:

§ 188.05–1 Vessels subject to requirements of this subchapter.

(a) * * *

Table 188.05–1(a) * * *

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974.

* * * * *

68. Section 188.05–10 is amended by revising paragraphs (a)(2) (i) and (ii) to read as follows:

§ 188.05–10 Application to vessels on an international voyage.

(a) * * *

(2) * * *

(i) From a country to which the International Convention for Safety of Life at Sea, 1974, (SOLAS 74) applies, to a port outside that country or the reverse;

(ii) From any territory, including the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate, whose international relations are the responsibility of a contracting SOLAS 74 government, or which is administered by the United Nations, to a port outside that territory or the reverse; or

* * * * *

69. Section 188.10–35 is revised to read as follows:

§ 188.10–35 International voyage.

(a) This section describes those voyages which are considered to be

"international voyages" for the purposes of this subchapter.

(b) Except as provided in paragraph (c) of this section, the term "international voyage" as used in this subchapter shall have the same meaning as that contained in Regulation 2(d), Chapter I of the International Convention for Safety of Life at Sea, 1974, i.e., *International voyage* means a voyage from a country to which the present convention applies to a port outside such country, or conversely."

(c) The International Convention for Safety of Life at Sea, 1974, does not apply to vessels "solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63d Meridian." Accordingly, such vessels shall not be considered as being on an "international voyage" for the purpose of this subchapter.

(d) In addition, although voyages between the continental United States and Hawaii or Alaska, and voyages between Hawaii and Alaska are not "international voyages" under the provisions of the International Convention for Safety of Life at Sea, 1974, such voyages are similar in nature and shall be considered as "international voyages" for the purposes of this subchapter.

PART 189—[AMENDED]

70. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

71. Subpart 189.60 is amended by revising the heading to read as follows:

Subpart 189.60—Certificates Under International Convention for Safety of Life at Sea, 1974

72. Section 189.60–5 is amended by revising paragraph (a) to read as follows:

§ 189.60–5 Cargo Ship Safety Construction Certificate.

(a) All vessels on an international voyage are required to have a Cargo Ship Safety Construction Certificate. This certificate shall be issued by the U.S. Coast Guard or the American Bureau of Shipping to certain vessels on behalf of the United States of America as provided in Regulation 12, Chapter I, of the International Convention for Safety of Life at Sea, 1974.

* * * * *

73. Section 189.60–45 is amended by revising paragraph (a) to read as follows:

§ 189.60–45 American Bureau of Shipping.

(a) The American Bureau of Shipping, with its home office at 45 Eisenhower Drive, Paramus, NJ 07653–0910, is hereby designated as an organization duly authorized to issue the "Cargo Ship Safety Construction Certificate" to certain oceanographic research vessels on behalf of the United States of America as provided in Regulation 12, Chapter I, of the International Convention for Safety of Life at Sea, 1974, and Executive Order 12234 and the certificate shall be subject to the requirements in this subpart. The American Bureau of Shipping is authorized to place the official seal of the United States of America on the certificate. This designation and delegation to the American Bureau of Shipping shall be in effect until terminated by proper authority and notice of cancellation is published in the **Federal Register.**

* * * * *

PART 192—[AMENDED]

74. The authority citation for part 192 continues to read as follows:

Authority: 46 U.S.C. 2213, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

75. Section 192.10–1 is amended by revising paragraph (c) to read as follows:

§ 192.10–1 Application.

* * * * * *

(c) In the case of special types of vessels subject to the International Convention for Safety of Life at Sea, 1974, which are not specifically treated in this subpart, the Commandant may give special consideration as to lifesaving equipment requirements to the extent permitted by the International Convention for Safety of Life at Sea, 1974.

76. Section 192.20–15 is amended by revising paragraph (nn) to read as follows:

§ 192.20–15 Description of equipment for lifeboats.

* * * * *

(nn) *Table of lifesaving signals.* The table shall be in accordance with the provisions of Chapter V, Regulation 16, of the International Convention for Safety of Life at Sea, 1974, and shall be printed on water resistant paper.

* * * * *

Dated: June 22, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–17298 Filed 7–25–90; 8:45 am]

BILLING CODE 491–10–14–M

federal register

Thursday
July 26, 1990

Part V

Department of Justice

Federal Prison Industries

28 CFR Part 302

Comments on UNICOR Business Operations; Final Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 302

Comments on UNICOR Business Operations

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, Federal Prison Industries, Inc. (UNICOR) is adopting a regulation which sets up procedures to assure a proper channel for communication of any concern by interested parties in the public and private sectors about its business operations. In the absence of this channel, letters containing comments on business operations have been sent to other government agencies, and consequently may not have come to the attention of UNICOR or its Board of Directors in a timely manner. The intended effect of this regulation is to assure that all concerns are heard by the proper officials and to provide for the more efficient operation of UNICOR.

EFFECTIVE DATE: July 26, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting a regulation which sets up procedures to assure a proper channel of communication for any concern by interested parties about the business operations of UNICOR.

Because this regulation imposes no restrictions and deals solely with agency procedures, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR part 302

Administrative practice and procedure.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR chapter III is amended as set forth below.

1. 28 CFR part 302 is added to read as follows:

PART 302—COMMENTS ON UNICOR BUSINESS OPERATIONS

Sec.

302.1 Public and private sector comment procedures.

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

§ 302.1 Public and private sector comment procedures.

(a) Any interested party having any comment concerning the business operations of Federal Prison Industries, Inc. (UNICOR) may write to the Chief Operating Officer of UNICOR, or to the Chairman of the Board of Directors of UNICOR, and bring such matters to the attention of either or both officials. Where appropriate, a response shall promptly be made. The Board shall be kept advised of all comments and responses.

(b) Correspondence should be addressed as follows:

(1) Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street, NW., ACACIA Bldg. Room 615, Washington, DC 20534, Attn: Comment Procedures; or

(2) Board of Directors, Federal Prison Industries, Inc., P.O. Box 2807, Washington, DC 20013–2807, Attn: Comment Procedures.

(c) This section does not apply to inmate complaints which are properly raised through the procedures provided in the Bureau of Prisons' rule on Administrative Remedy (28 CFR 542).

[FR Doc. 90–17487 Filed 7–25–90; 8:45 am]

BILLING CODE 4410–05–M

federal register

Thursday
July 26, 1990

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8 et al.

Federal Acquisition Regulation (FAR); Quality and Contractor Responsibility; Prescription for Delivery Clauses; and Multiple-Award Schedules-Streamlined Source Selection Procedures; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATON

48 CFR Part 9

Federal Acquisition Regulation (FAR); Quality and Contractor Responsibility

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to the Federal Acquisition Regulation (FAR) in 9.104–3(c) to include quality as a criteria in determining contract performance and to make other editorial changes.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–37 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–37.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 et seq., because the proposed changes do not impose any new requirements on contractors, and it is a change to internal operating procedures. Therefore, an Initial Regulatory Flexibility Act Analysis has not been performed. Comments are invited. Comments from small entities concerning the affected FAR section will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–37) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: July 19, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.104–3 is amended by revising paragraph (c) to read as follows:

9.104–3 Application of standards.

* * * * *

(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each when making this determination. If the pending contract requires a subcontracting plan pursuant to subpart 19.7, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

[FR Doc. 90–17446 Filed 7–25–90; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 12 and 52

Federal Acquisition Regulation (FAR); Prescription for Delivery Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) in 12.104(a) and the clauses at 52.212–1 and 52.212–2 to allow the contracting officer to use both clauses for all contract or solicitation types, except for construction and architect-engineering procurements.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–38 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–38.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because these changes do not impose any new requirements on contractors, and it is a change to internal operating procedures. Therefore, the Regulatory Flexibility Act does not apply. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–38) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 12 and 52.

Government procurement.

Dated: July 19, 1990.

Albert A. Vicchiolla

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 12 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 12—CONTRACT DELIVERY OR PERFORMANCE

2. Section 12.104 is amended by revising the second sentence in paragraph (a)(1) and the first sentence in paragraphs (a)(2) and (a)(3) to read as follows:

12.104 Contract clauses

(a) * * * (1) * * * The clauses and their alternates may be used in solicitations and contracts for other than construction and architect-engineering substantially as shown, they may be changed, or new clauses may be written.

(2) The contracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.212–1, Time of Delivery, if the Government requires delivery by a particular time and the delivery schedule is to be based on the date of the contract. * * *

(3) The contracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.212–2, Desired and Required Time of Delivery, if the Government desires delivery by a certain time but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212–1 is amended by revising the introductory text of the clause to read as follows:

52.212–1 Time of Delivery.

As prescribed in 12.104(a)(2), insert the following clause:

* * * * *

4. Section 52.212–2 is amended by revising the introductory text of the clause to read as follows:

52.212–2 Desired or Record Time of Delivery.

A prescribed in 12.104(a)(3), insert the following clause:

* * * * *

[FR Doc. 90–17448 Filed 7–25–90; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 8

Federal Acquisition Regulation (FAR); Multiple-Award Schedules—Streamlined Source Selection Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 8.405–1(a) that will require the ordering office to review as many schedule price lists as are reasonably available, but at least three price lists from current schedule contractors that offer the required item. Further, the requirement to document the purchase of an item over $1,000 placed at other than the lowest price is changed to require justification if the item exceeds the price reasonableness verification threshold in FAR 13.106.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–40 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering this change because existing FAR coverage implies that ordering offices must review all available price lists. The number of available price lists may be inordinate for the value and number of items being ordered. Also, the ordering office is currently required to justify in the contract file orders placed at other than the lowest price for items exceeding $1,000. This low threshold is not cost effective. The principle behind the requirement to justify purchasing other than the lowest priced item is the same principle as the requirement and the threshold for price reasonableness at 13.106.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely clarifies ordering procedures and documentation requirements for ordering offices, and imposes no requirements of any kind upon small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: July 19, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 8 be amended as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR part 8 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 8.405–1 is amended by revising the introductory text of paragraph (a) to read as follows:

8.405–1 Ordering from multiple-award schedules.

* * * * *

(a) Orders should be placed with the schedule contractor offering the lowest delivered price available. The ordering office shall review the schedule price lists that are reasonably available at the ordering office. Where the ordering office has available fewer than three price lists from current schedule contractors that offer the required items, the ordering activity shall obtain additional price lists from schedule contractors listed in the GSA schedule for the required items. The ordering office shall fully justify in the contract file orders for a line item exceeding the price reasonableness verification threshold at 13.106 placed at other than the lowest price identified in its review. Justification for ordering a higher priced item may be based on such consideration as—

* * * * * * *

[FR Doc. 90–17447 Filed 7–25–90; 8:45 am]
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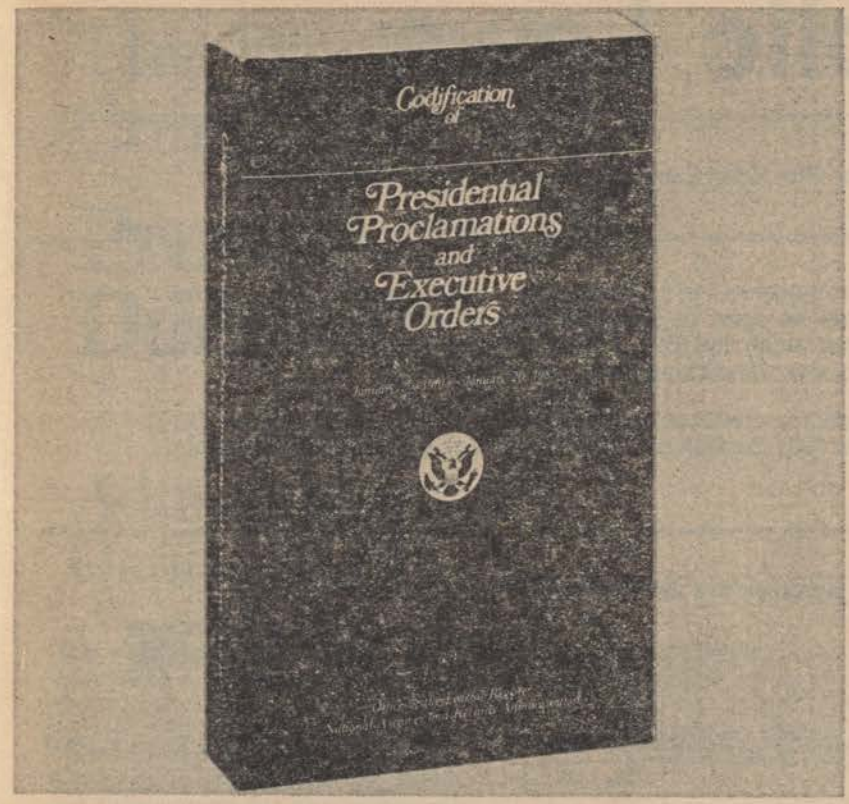

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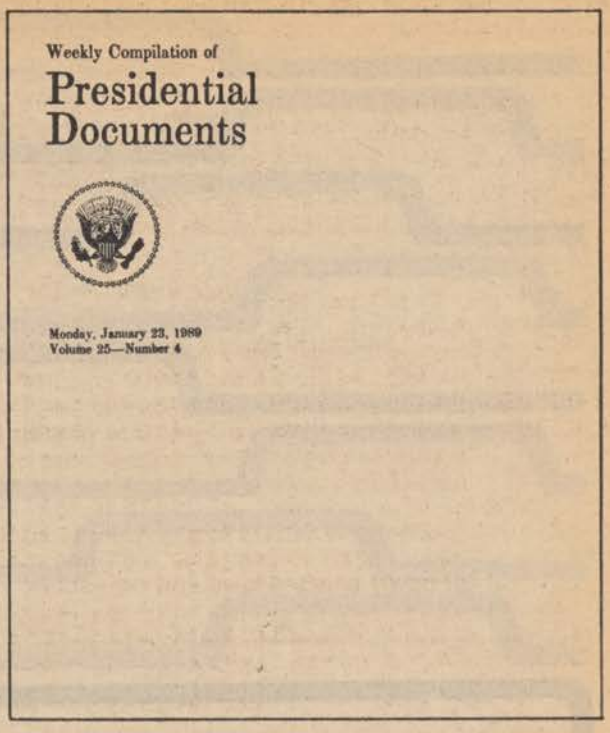

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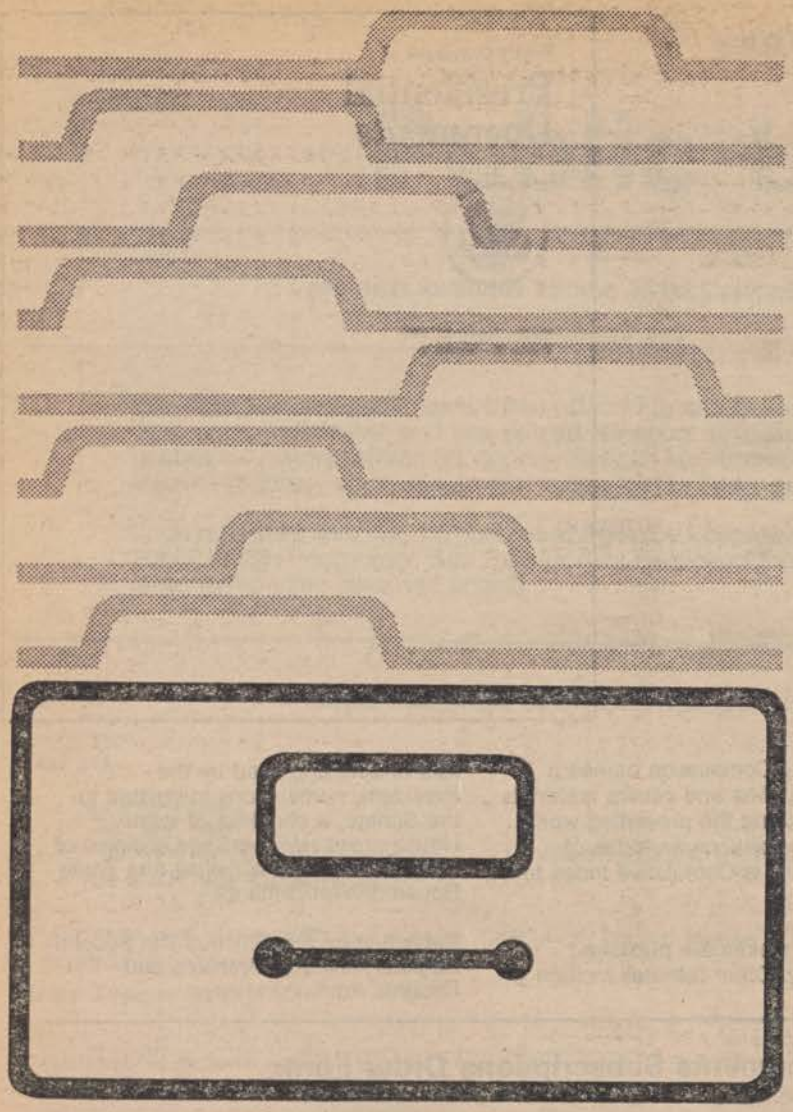

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